# United States Court of Appeals for the Second Circuit



**APPENDIX** 

75-7388

UNITED STATES COURT OF APPEALS

For the Second Circuit

BERALDINE L. ACHA and ARLENE M. EGAN, each individually and on behalf of all others similarly situated,

Appellants,

against

ABRAHAM D. BEAME, individually and in his capacity as Mayor of the City of New York, MICHAEL J. CODD, individually and in his capacity as Police Commissioner of the New York City Police Department and THE CITY OF NEW YORK, as a public employer,

Appellees.

APPENDIX TO BRIEF FOR APPELLANTS

Appeal from the District Court of the United States for the Southern District of New York

MURRAY A. GORDON, P.C. Attorneys for Appellants 666 Third Avenue New York, New York. SEP 22 1975

75-7388

OITY OF NEW YOU



PAGINATION AS IN ORIGINAL COPY

# INDEX

	Page
Docket Entries	la
Extract of Docket Entries	2a
Summons in Civil Action	3a
Comp lint	4a
Exhibit A to Complaint letter dated June 20, 1975	16a
Exhibit B to Complated sworn personnel data  New York City Police Department June 12  1975	17a
Exhibit C to Complaint sworn personnel data  New York City Police Department Dec. 28, 1972	18a
Exhibit D to Complaint sworn personnel data  New York City Police Department Feb. 1,  1973	19a
Exhibit E to Complaint sworn personnel data New York City Police Department Feb. 8, 1973	20a
Exhibit F to Complaint sworn personnel data  New York City Police Department July 5,  1973	21a
Exhibit G to Complaint Notice of Examination No. 9080 Patrolman New York City Police Department	22a
Exhibit H to Complaint Notice of Examination No. 9081 Policewoman New York City Police Department	23a

Exhibit I to Complaint-Complaints to Com- mission on Human Rights of Beraldine L. Acha and Arlene M. Egan	24a
Exhibit J to Complaint Charge of Discrimin- ation of Beraldine L. Acha and Arlene M. Egan	32a
Order to now Cause and Supporting Affidavits	40a
Affidavit of Beraldine L. Acha	42a
Affidavit of Arlene M. Egan	45a
Affidavit of Gertrude Schimmel	48a
Affidavit of Marina Angel	52a
Affidavit of Ronald H. Shechtman	56a
Affidavit of Cornelius J. Behan in opposition	59a
Affidavit of Deputy Chief James M. Sullivan	64a
Transcript of Hearing dated June 30, 1975 before Hon. Kevin T. Duffy	67a
Opinion and Order dated July 1, 1975 of Hon. Kevin T. Duffy	96a
Notice of Appeal dated July 2, 1975	100a
Letter dated July 30, 1975-letterhead of Murray A. Gordon, P.C	101a
Letter dated August 7, 1975-letterhead of New York City Department of Law	104a
Proposed Counter-judgment	108a
Letter Dated August 15, 1975-letterhead of Murray A. Gordon, P.C	109a
Judgment entered September 2, 1975	112a
Notice of Appeal dated September 3, 1975	113a

Docket Entries \_\_\_ ACHA, BERALDINE L. ETAL VS BEAME, ABRAHAM D. etc. ETAL

-		NR.	PROCEEDINGS DUFFY,
	06/26/75	2	Filed defts' affidavit of Cornellus J. Benan in opposition to plain motion for a preliminary injunction restraining defts'.
١	06-30-7	5 3	Filed defts' Memorandum of Lew.
	07-02-75	4	Filed Opinion # 42709 and Order—for the reasons stated, the injunctive application of the pltifs. will be denied and the cause will be dismissed. So ordered—DUFFT, J. (m/n)
	07-01-75	5	Filed summons and return-served the following:  Michael J. Codd by Lt. Brennen on 06-26-75.  New York ity c/o Corporation Counsel by Arma Schonbuch on 06-26-75.  Abriham D. Beams by Law. Gersen on 06-26-75.
	07-03-75	6	Filed pltffs' notice of appeal from the order denying pltffs' motion for a preliminary injunction, etc. and from the final judgment entered on 07-01-75. Copy to: Corporation Counsel, of the City of N.Y. Ent. 7-7-75.
	07-09-75	7	Filed pltffs' affdvts and Order to Show Canse for preliminary injunction and temporary restraining order. — that no bond or surety be posted by pltffs.  Ret. 6-30-75. DUFFT, J.
	07-09-75	8	Filed pltffs' affdvt. of Romald H. Schectman in support of application for a temporary restraining order and preliminary injunction.
	07-09-75	9	Filed pltffs' memorandum of law.
-	07-09-75	10	Filed deft. N.Y.City Police Dept. affdvt. of Cornelius J. Behan in opposition to pltffs' motion for a preliminary injunction.
ĺ	7-6-75	11	Filed transcript of record of proceedings, dated 6-30-75

A TRUE COPY
RAYMOND F. BURGHARDT, CIOTE Deputy Clerk

#### Extract of Docket Entries

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

U.S.C.A. NO. 75-7388

BERALDINE L. ACHA, etc.

PLAINTIFFS

CASE NO. 75 ctv. 3128

JUDGE DUFFY

ABRAHAM D. BEAME, etal.

-V-

DEFENDANTS.

#### EXTRACT OF DOCKET ENTRIES

DATE

#### PROCEED INGS

- AUGUST 29-75 Proposed Counter Judgment-Duffy J. dtd: August 28-75.
- SEPTEMBER 3-75 Letter dated July 30-75, from Murray A. Gordon, P.C. to Judge Duffy.
- SEPTEMBER 3-75 Letter dated August 7-75, from Nancy E. Siegel to Judge Duffy.
- SEPTEMBER 3-75 Letter dated August 15-75, from Murray A. Gordon, P.C. to Judge Duffy.
- SEPTEMBER 3-75 Plaintiffs' Amended Notice of Appeal.

A TRUE COTY
TOUROND OF SUPERINARDA, Clerk

Mark

SEP 3 1975

UMMONS IN A CIVIL ACTION Summons in Civi Action

# United States District Court

FOR THE

SOUTHERN DISTRICT

CIVIL ACTION FILE NO. 75 CN 3128

BERALDINE L. ACHA and ARLENE M. EGAN, each individually and on behalf of all others similarly situated,

Plaintiff

SUMMONS CLASS ACTION

ABRAHAM D. BEAME, individually and in his capacity as Mayor of the City of New York, MICHAEL J. CODD, individually and in his capacity as Police Commissioner of the New York City Police Department and THE CITY OF NEW YORK, as a public employer, Defendant

Lo the above named Defendant :

You are hereby summoned and required to serve upon MURRAY A. GORDON, P.C.

plaintiff's attorney , whose address

666Third Avenue, New York, New York, 10017

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be to a against you for the relief demanded in the complaint.

Deputy Clerk.

Date: 6/26/75

[Scal of Court]

Comp 1

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BERALDINE L. ACHA and ARLENE M. EGAN, each individually and on behalf of all others similarly situated,

Plaintiffs,

-against-

ABRAHAM D. BEAME, inc. 1 ally and in his capacity as Mayo he City of New York, MICHAEL J. CODD, individually and in his capacity as Police Commissioner of the New York City Police Department, and THE CITY OF NEW YORK, as a public employer,

COMPLAINT

CLASS ACTION
75 Civ. 3128

Defendants.

# Preliminary Statement

injunctive relief pursuant to 28 U.S.C. §§2201 and 2202, respectively and 42 U.S.C. §§1983 and 2000e-2, to protect plaintiffs herein and the class which they represent from deprivation of certain rights, privileges and immunities secured by the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution. Injunctive relief is sought to enjoin defendants from terminating the employment of any female Police Officers employed by the New York City Police Department. Declaratory judgment is sought declaring that the proposed actions of the defendants in terminating the employment of female Police Officers employed by the New York City Police Department are unconstitutional and void as applied to plaintiffs and all

other similarly situated female Police Officers.

### Jurisdiction

- 2. Jurisdiction is conferred upon this Court by 28 U.S.C. §§1343(3) and 1343(4), providing for jurisdiction in this Court for an action to address the deprivation, under color of state law. of rights, privileges and immunities guaranteed by the Constitution of the United States and to secure injunctive and declaratory relief authorized by 42 U.S.C. §§1983 and 2000e-2. This is an action seeking redress for the deprivation of the constitutional and civil rights of plaintiffs named herein and all others similarly situated, as secured under and guaranteed by the Fourteenth Amendment to the Constitution of the United States and under 42 U.S.C. §§1983 and 2000e-2.
- 3. This Court is authorized by 42 U.S.C. § 1983 and 2000e-e to grant the relief herein requested.

# Class Action Allegations

themselves and all other female Police Officers similarly situated, as a class action pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(2). The plaintiffs are members of a class containing approximately 450 members, which class is so nomerous as to make joinder impracticable, composed of female Police Officers who have received or will receive notices that their employment with the New York City Police Department will be terminated on June 30, 1975.

- 5. Each plaintiff and member of the class is an adult female citizen of the United States who holds a permanent appointment in the classified civil service of the City of New York and is employed by the defendants as a Police Officer in the New York City Police Department.
- 6. The Plaintiffs named herein will fairly and adequately protect the interests of the class in that their mutual and separate claims are typical of the individual claims of the members of the class, there are no conflicts of interest among the members of the class, and there are questions of law and fact common to the class.
- 7. Final injunctive and corresponding declaratory relief with respect to the class as a whole are appropriate in that defendants are acting on grounds, challenged by plaintiffs named herein, generally applicable to the class.
- 8. The defendants have acted and proposed to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the class as a whole; to wit, they have notified the plaintiffs that their employment with the New York City Police Department will be terminated on June 30, 1975.

#### Parties

- 9. The plaintiffs in the action are:
- A. Beraldine L. Acha, who resides at 10 Water-side Plaza, New York, New York 10010, is a Police Officer with the New York City Police Department and has served therein since

May 29, 1973. She is presently married, and earns the same amount of money as her husband, approximately \$13,000 a wear. Beraldine L. Acha provides the sole support for her 9 year-old son by a previous marriage, of whom she has custody. She received notice on June 24, 1975 that her employment with the New York City Police Department will be terminated on June 30, 1975.

B. Arlene M. Egan, who resides at 80-20 249 Street, Bellerose, New York, 11426, is a Police Officer with the New York City Police Department and has served therein since June 25, 1973. She is divorced and has custody of her 14-year old son, whom she supports. Her salary of approximately \$13,000 is her sole source of income.

- 10. The defendants in the action are:
- A. Abraham D. Beame, individually and in his capacity as Mayor of the City of New York.
- B. Michael J. Codd, individually and in his capacity as Commissioner of the Police Department of the City of New York.
- C. The City of New York, a municipal corporation duly incorporated under the laws of the State of New York, and the public employer of plaintiffs and each member of the class.

## Factual Allegations

11. Commencing on or about May 21, 1975, plaintiffs, and members of their class, were notified that their services with the New York City Police Department are to be terminated on June 30, 1975. The defendants plan to terminate the services of 5,000 Police Officers. As of June 24, 1975, 4,000 notices had

been given; approximately 371 to femal Police Officers. When the final 1,000 notices are given, it is expected that all of the approximately 450 female Police Officers appointed since January of 1973 will be terminated. A copy of the notice served on plaintiff Arlene M. Egan, which is identical in substance with each such notice served on or to be served on the plaintiffs and all of the members of their class, is annexed hereto as Exhibit "A" and made a part hereof.

- members of the uniformed force of the New York City Police Department and of these there are approximately 21,669 males in the rank and title of Police Officer and 618 females in said rank and title. A copy of the Sworn Personnel Data Report of the New York City Police Department, dated June 12, 1975 is attached hereto as Exhibit "B" and made a part hereof. There are approximately 724 women currently employed in the uniformed force of the Police Department.
- approximately 354 women to be employed <u>in toto</u> in the uniformed force of the Police Department, with 223 women in the title of Policewoman. Copies of the Sworn Personnel Data Reports of the New York City Police Department dated December 28, 1972 and February 1, 1973 are attached hereto as Exhibits "C" and "D" and made a part hereof. The quota was not lifted until February of 1973. Copies of the Sworn Personnel Data Reports of the New York City Police Department dated February 8, 1973 and July 5, 1973 are attached hereto as Exhibits "E" and "F" and made a part hereof.

- 14. Prior to 1973, women in the Police Department served in the title of Police man and men served in the title of Patrolman. It was only in 1973 that the two titles were merged into the title of Police Officer.
- appointed to the Police Department were initially assigned to the Bureau of Policewomen, where men were assigned to precincts throughout the City.
- for the position of Policewoman and Patrolman. An examination for the position of Policewoman was given in 1964 and another one in 1969. Examinations for the position of Policewoman were given approximately every four years. During the same period of time several examinations were given for the position of Patrolman.
- 17. In 1969 two examinations were given; No. 9080 for the title of Police Trainee/Patrolman, and No. 9081 for the title of Policewoman See attached Exhibits "G" and "H".
- 18. Although two separate examinations were announced and the examinations were administered separately, the examination questions were the same and the examinations were graded in the same fashion. Separate eligible lists were, nevertheless, established as a result of the two examinations.
- 19. As Exhibit "G" and 'H" show, and as was applied in practice, Examination No. 9080 was open only to men who were 16 years of age on the date of the written examination and

17 years of age on the date of appointment. Such men were eligible for the position of police trainee, which position would evolve into the position of Patrolman upon the reaching of the 21st both-day. On the other hand, Examination No. 9081 for the position of Policewoman was open to women not less than 19 years of age on the date of the written examination. There was no trainee position made available to women.

- York City Police Department in effect from approximately 1970 to January 1973. During this period of time there were no appointments made directly to the positions of Patrolman or Policewoman, although males who had passed previous examinations and were at the Police Academy in a position of police trainee were appointed to the Police Department at this time.
- 21. When the job freeze was lifted in January 1973, it was determined by the then Police Commissioner Patrick J.

  Murphy, that men and women should be appointed from separate

  lists on a ratio of four men to one woman, regardless of comparative grades on the examinations. Although all the women appointed to the Police Department subsequent to January 1973 were appointed from a list established as a result of Examination No. 9081, men were appointed from five different lists.
- 22. On information and belief it is alleged that men were appointed to the title of Police Officer prior to women who had taken the same 1969 examination and received higher grades.

- 23. Since January 1973 approximately 4,236 male
  Police Officers have been appointed and approximately 513 female
  Police Officers have been appointed to the Police Department
- Policewoman were merged into the title of Police Officer. Men and women appointed to the Department subsequent to 1973 underwent the same medical examination and received the same training at the Police Academy.
- 25. Both plaintiffs Acha and Egan were willing and qualified to take an examination for Policewoman and/or Police Officer subsequent to 1964 and prior to 1969, but no such examination was open to them.
- 26. Under New York Civil Service Law \$285 additional credit is allowed to veterans on competitive examinations.

  Prior to recent amendment of federal law, men were subject to involuntary draft into the armed services of the United States and women were not. Presently neither men nor women are subject to involuntary draft.
- 27. The termination notices sent to plaintiffs and members of their class are purportedly in conformity with the inverse order of original appointment on a permanent basis.
- 23(a) The proposed termination of employment of the plaintiffs and members of their class would result in a disproportionate impact on the number of women in and employed by the New York City Police Department. It would result, in many cases, to the loss of a sole source of income for plaintiffs and members of their class. Furthermore it would result in discrimination on the basis of sex.

28(b)
The action of defendants herein complained of is facially, patently and statistically discriminatory, to wit:

#### CHART #1

# COMPOSITION OF POLICE DEPARTMENT AS OF DECEMBER 28, 1972

# of Female Approximate Size % of FPO
Police Officers of Uniformed Force

223 (active) 29,532 (active) 00.75% (active) 290 (quota) 30,816 (quota) 00.94% (quota)

#### CHART #2

# COMPOSITION OF POLICE DEPARTMENT AS OF JUNE 12, 1975

618 (active) 30,374 (active) 2.03% (active) quota unknown 35,219 (quota)

#### CHART #3

# COMPOSITION OF POLICE DEPARTMENT AS OF JULY 1, 1975

Total Unif. Force # of Female Police # of Male % Female Police Officers Police Officers Police Officers 26,374 347 18,040 1.32%

#### CHART #4

# APPOINTMENTS TO POLICE OFFICER: JANUARY 1973 TO DATE

# of Male Police # of Female Police Total % Female Police Officers Officers 4,246 513 4,759 10.78%

#### CHART #5

# PERCENTILE REDUCTION IN POLICE OFFICERS TOTAL BY SEX

Female Police Female Police Officers % of Female Police Officers Term.

As of June 1975 Officers Term.

60.03%

Male Police Male Police Officers % of Male Police Officers Term.

Male Police % of Male Police Officers Term.

3,629 21,669 16.75%

- 29. The resultant loss, damage and injury to the plaintiffs and the members of their class would be serious and irreparable for which there is no adequate remedy at law.
- filed complaints with the New York City Commission on Human Rights and the United States Equal Employment Opportunity Commission, which in substance, fact and law sets forth claims as those here-inbefore stated. A copy of the complaints duly filed with the New York City Commission on Human Rights is annexed hereto as Exhibit "I" and made a part hereof. A copy of the complaints duly filed with the United States Equal Employment Opportunity Commission is annexed hereto as Exhibit "J" and made a part hereof. Upon information and belief, no action can or will be taken by the respective agencies for or on behalf of plaintiffs herein prior to June 30, 1975, whereupon plaintiffs and/or the members of the class will be irreparably injured by defendants action herein at issue.
- 31. There has been no previous application by the plaintiffs for the relief sought herein.

#### The Violations of Law

plaintiffs and members of their class in the proposed terminations based on inverse order of seniority is not necessitated by business necessity and will perpetuate previous and invidious sex discrimination practiced by the defendants. It will result in irreparable injury to plaintiffs and members of their class, since they will suffer discrimination on the basis of sex and lose the ability to support themselves and their families, which injuries will be in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Con-

stitution and 42 U.S.C. §§1983 and 2000e-2.

33. Each plaintiff and member of the class has no adequate remedy at law and defendants are threatening them with irreparable injury and will cause them and all other similarly situated irreparable injury unless enjoined by this Court.

# Prayer for Relief

WHEREFORE, plaintiffs respectfully pray on behalf of themselves and all others similarly situated that this Court:

- A. enter a declaratory judgment declaring that the proposed termination of employment of plaintiffs and each member of the class herein violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution and 42 U.S.C. §§1983 and 2000e-2;
- pending the hearing and determination of this action, a preliminary injunction restraining, prohibiting and estopping the
  defendants, and their servants, agents and employees from continuing the policies and practices of the defendants, including,
  but not limited to, the proposed termination of employment of
  the plaintiffs and members of their class as hereinbefore set
  forth, in violation of the Due Process and Equal Protection Clauses
  of the Fourteenth Amendment of the United States Constituion and
  42 U.S.C. §§1983 and 2000e-2;
- c. allow plaintiffs their costs and disbursements herein as well as reasonable attorneys fees;

D. grant such other and further relief as may be proper.

MURRAY A. GORDON, P.C. Attorneys for Plaintiffs

RV.

MARINA ANGEL
Office & P.O. Address
666 Third Avenue
New York, N.Y. 10017
Tel.No. 212-661-7900

FOLUE DEL ARTMET I Exhibit A to Complaint

June 20, 1975

Dear Officer Arlene Egan:

Mayor Beame joins me in expressing our profound regret and deep personal concern that the City's fiscal crisis requires us to lose your valuable services at this time. Your termination is effective June 30, 1975.

Your name is being placed on a preferred list and you will be eligible to be rehired when fiscal conditions improve.

A Job Referral Service has been established in the Employment Division of the Department. This service will coordinate with other City agencies and with the private sector in seeking employment for you. You can avail yourself of this service by calling 374-6818. You will be given all possible assistance in obtaining employment.

We hope this service will be of help to you in these trying circumstances.

Sincerely,

POLICE COMMISSIONER



1AS	NK SUCPENDED	BUDCET	WORKING	ACTIVE	LEAVE OF ABSENCE WITH PAY	TERMINAL LEAVE ON LINE	VACANCY	ABSENCE WITHOUT PAY CVER 90 DAYS	LEAVE LUMP SUM LINE
C	Of Operations	1	1	1			ļ	İ	1
H	Field Services	1	1	1			· · · · · · · · · · · · · · · · · · ·	l	
1	Detectives	1	1	1					
E	Inspectional Services	1	1	1		L	l	l	
F	Organized Crime Control	1	2	1				1	
	Assistant	15	15	14			1		
	Deputy	23	23	23				<u> </u>	
	Chief of Personnel	1	1	1					
	Inspector	4.3	44	42		1		11	
_	Deputy	101	102	100		1		11	
	Captain	365	765	345		8	11	1 1	<u> </u>
			1						
L	Director Legal Bureau	1.	+1GJCC	1	1	1			
T	Special Assignment		15:11:3	15					
T	Commander Detective Squad	15-		55		1	8	1	
S	Lieutenant	1,017	1.017	973	1	5	78		
	Createriant	1,017							
S	Special Assignment	22	23+10300	22		1	4	1	
G		95		0.5		2 .	6	2	
T	Sergeant 5		2850+4110	2.725	1	12	109	6	1
	Sergeam	2400		2,725					٠.
D	First Grade — Male	165	165	123		3	55		
E	Female	167	135	3		1	-		
T	Second Grade — Male	632	682	553		7	115	2	
-	Female	502	+10300	7					
S		2.000		2,876		20	29	5	
-	Female	2,982	2,982	52					
<u> </u>	1 Cinate		-						
0	Special Assignment	- CC	n n	. 75	1	1	42	1	-
-		77	77	35		105	4,254	15	
0	Male 40	26,658	26,658	_ 21,669 6 <b>1</b> 8		100	1,22	16	1
	female	1 .	1	0.18	•				
-			1 4	1	1	1		-	Ì
1 -			. 1	1			1		
1 1	Deputy Chief	1	29	29	f		i		1
R	Surgeon	29	29						
-7	TAL 47	35,219	35,221	30,374	. 3	165	4,627	52	1

# SWORN PERSONNEL DATA

Mid. Thursday, Lcc. 28, 1972

		4	FILLED POSITIONS				LEAVE OF	TERMINAL
RANK	BUDGET	WORKING QUOTA	ACTIVE	ABSENCE WITH PAY	TERMINAL LEAVE ON LINE	VACANCY	WITHOUT PAY OVER 90 DAYS	LUMP SUM
Chief Inspector .	1	1	1					
Chief of Patrol Services	1	1	1					
Chief of Detectives	1	1	2					
Chief of Inspectional Services	1	2	3					1
Chief of Organized Crime Control	1	2	1					1
AG.I.	14	16	24				11_	2
	24	25	24					2
rspector	43	49	4 44					5
Deputy Inspector	101	2.74	101					13
Captain	364	354	356	3	7			
Dir. Legal Bureau	1	3	3					
Pir Policewomen	1	- 2 - 2	Z					
LL—Special Assignment	15	10.7	15					-
t.—Commander Det. Sqd.	65	66	61		5		l	
Lieutenant	1,017	2017	1003		12	2	·	
Sgt.—Special Assignment	22	22	21		1			
Sgt.—Supervisor Det. Sqd.	95	25	61	1	12			
Sergeant 2504	2354	2604+1170	2555		12	31	5	
Detective First Grade—Male	231	233	209		7	33 25		
Detective First Grade—Female	4	4	3					
- Live Second Grade—Male	8 32	622	764		24	54		
Tist at ve Second Grade—Female	11	2.1	8		2.	2		
Datestive Third Grade—Male	1,731	2731	1657		6	38		
Detective Third Grade—Female	50	50	4,8		2			
Patrolman—Special Assignment -	77	77	77					
Patrolman	23,168	23,188	22,191		124	671	2	
Policewoman	290	290	273		2	62	3	!
Chief Surgeon	1	2	1	1				
Deputy Chief Surgeon	1	1	3.	1				
surgeon	27	27	27				ļ	
TOTAL	34,625	30,000	29,532	7	297	1076	11	24

18a ibit C to Complaint

Mid. Thursday, Feb. 1, 1973

		1		FI'LED POSITIONS			1	LEAVE OF	TERMINAL
RANK		BUDGET	WORKING	ACTIVE	LEAVE OF ABSENCE WITH PAY	TEPMINAL L'AVE	VACANCY	ABSENCE WITHOUT PAY OVER 90 DAYS	LUMP S A
Chief Inspect		1	3	7	WITH PAT	ON LINE		OVER 90 DAYS	LINE
Chief of Patrol Services		1	2	1					
Ch.ef of Detectives		1	2	2					
Chief of Inspectional Services		1 1 "	2	2			- <del>-</del>		
Chief of Organized Crime Control		1	2	1					
AC!		14	14	14					
<b>毫</b> 儿.		24	24	23				2	
Inspector		43	47						1
Deputy Inspector		101	105	53					4
Captain		364	364		7				5
Dir. Legal Bureau		1	2	355		3	5		
Dir. Policewomen		1	- 1	2					
Lt.—Special Assignment		15	1542 FIS						
Lt.—Commander Det. Sqd.		65	65	61					· ·
Lieutenant		1,017	1017	1003		1			
S= - Special Assignment		22	22	21			13		
Sgt.—Supervisor Det. Sqd.		95	95	90			1		
Sergeant	2753		2750400			3	3_	2	
Detective First Grade—Male		231	231	2633		5 2	111	5	
Detective First Grade—Female		4	4	The second secon		6.	22		'
ictive Second Grade—Male		8 32	The state of the s		-				
Detective Second Grade—Female		11	632	755		5	72		
Detective Third Grade—Male	900 MARCH 1989	1,731	1731	2674		-	3 55		
Detective Third Grade—Female		50	50	45		2	55		
Patrolman—Special Assignment		77	77	74			2		
Patrolman		23,035	23,038	22,077		22	2		
Policewoman		290	290			32	924	5	
Chief Surgeon		1	1	224			63	3	
Deputy Chief Surgeon		1	2	1					1
Surgeon		27	27						
	DTAL	30,016	30,624	29,465	1	55	1277	25	11

19a Exhibit D to Complaint SWORN PERSONNEL DATA

Mid. Thursday, Feb. 6, 1973

	1		1_	FILLED POSITIONS			-	LEAVE OF	TERMINAL
RAN:(		EUDGET QUOTA	WORKING QUOTA	ACTIVE	LEAVE OF ARSENCE WITH PAY	TERMINAL LEAVE ON LINE	VACANCY	ABSENCE WITHOUT PAY OVER SO DAYS	LEAVE LUMP SUM LINE
Chief Inspector		1	2	2					
Chief of Patrol Services	1	1	1	2					
Chief of Detectives	i,	1	2	1					
Chief of Inspectional Services		1	. 2	2			/		
Chief of Organized Crime Control		1	1	2			1		
ASJ.		14	14	24				2	
b.c.A.		24	24	23			3		[]
Inspector		43	45	43					3 5
Deputy Inspector		101	105	100					5
Captain		364	364	355	2	3	5		
Dir. Legal Sureau		1	2	2.	4		, /		
Dir. Policewomen		1	47 02	1	. 1				
Lt.—Special Assignment		15	2502 10	15 61	(				
Lt.—Commander Det. Sqd.		65	65	61		3	1		
Lieutenant		1,017	1017	1002		Σ	24		
Sgr — Epecial Assignment		22	22	22			1		
Sgt.—Supervisor Det. Sqd.		95	. 95	90		2	3	5	
Sergeant	2250	2	2020-40	2522		5	212	5	
Detective First Grade—Male		231	232	205		4	22		,
Detective First Grade—Female		4	i i	8 3			2		
ctive Second Grade—Male	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	8 32	822	754		5	73		
Detective Second Grade—Female		11	23	3			3		
Detective Third Grade—Male		1,731	1731	1673		3	55		
Detective Third Grade—Female		50	53	40					
Patrolman—Special Assignment		77	77	73		1	4		1
Patro!maii		22,839	22,038			29	573 157	5	1
Policewoman	390	290	523	230	1	1	157	3	
Chief Surgeon		1	1	1	A	1			_
Deputy Chief Surgeon		1	1	7					
Surgeon		27	27	27		1	1100		
	TOTAL	30,036	30,621	29,627	7	54	1127	15	3

# SWORN PERSONNEL DATA

# MID. THURSDAY, JULY 5, 1973

		1		FILLED POSITIONS				LEAVE OF	TERMINAL
RANK		BUDGET	WORKING QUOTA	ACTIVE	LEAVE OF ABSENCE WITH PAY	TERMINAL LEAVE ON LINE	VACANCY	WITHOUT PAY OVER 90 DAYS	LUMP SUM LINE
Chief Inspector		1	5	3					1
Chief of Fatrol Services		1	4	4				3	
Chief of Detectives		1	7	7					
Chief of Inspectional Services		1	4	3					
Chief of Organized Crime Control		1	-7	4					
<i>f</i>		14	17	55					2
D.C.I.		24	27	63					2
Inspector		43	\$\$	A 45					1
Deputy Inspector		101	102	101					3
Captain	-	354	54.5	5.4	3	10	0	3	
Dir. Legal Bureau ,		1	4	2					
Die Del sewomen		1	4	0			7		
Lt.—Special Assignment		15	15:11 ED	15					
Lt.—Commander Det. Sqd.		65	65	153		6		1	
Lieutenant		1,017	1017	976		20	7	7	
Sgt.—Special Assignment		22	en de de	1		3	5		
Sgl.—Supervisor Det. Sad.		95	55	C7		C.	5	5	
Sprgeant	2	2.2.3.	27530000	7750		40	17	7	
Datactive First Grade—Male		251	271	6.753		50	Qu.	9	
otive First Grade—Female	,	4	6	3			٤.		
Delective Second Grade—Male		8 32	623	600		25	109	3	
Detective Second Grade—Femalé		11	40	?		3	5		
Detective Third Grade—Male		1,731	7731	1502		55	703	3	
Detective Third Grade—Female		50	53	27		3	7	3	
Patrolman—Special Assignment	•	77	77	70	İ		7		
Patrolman		22,873	22,033	21,753		220	859	33	
Policewoman	550	Los	623,633 626	253	1	3	25	8	
Chief Surroon		1	. 3	1		1			
Daputy Chief Surgeon		1	9	2					
17557		27	23	27	1	3	1		
	TOTAL	30,815	50,323	29,200	4	590	1123	55	7

F to Complaint

21a

1 KM ex

rarios .....

The extendration is open only to men.
A steple list will be established from this extendent end appeled ears will be rested retilier that admin on Pales Trainer Golleg Departments depending on age.
Police Trainer is a trainer class of positions, A Police Trainer is a trainer elses of positions oppositional as a Profestionary Paradomn on reaching be 20th birthing, or as should interest as practically without taking any further entires on physical rests, provided has a satisfactory treated as trainer and pravided he present needed test identical to the one given to Patrolman cambidates. one given to Patrolman candidates.

Salary, Vacancies and Bracits (Petrolman): The entrance salary is \$9,400 per annum at present. Paradinen receive interneurs of \$2.5 at the end of their first year, \$501 at the end of their second year and \$602 at the end of their third year, in the Police Department. The salary reached through these increments is \$10.050 per annum. Other benches include an annual traiterin allowance, it paid heidays annually, a generous annual base, such have, membership in a liberal pention receive, the Secial Security System, a welfate find, and a health insurance plan. There are many years on.

Police Towner (Police Department): The entrance salary is \$1,500 per annum. There will be an increment of \$2.00 per annum after eight years for trainer revises up to a maximum of Lim increments. There will be a constrained from increments. Salary, Vacancies and Pencits (Petrolnan):

ments. Then will be a constraint number of positions in the Police Department under this propositions in the Police Department under this proposition.

Many benefits are, or may be enjoyed by New York City enginees. These benefits include generous animal leave, sick leave, membership in a liberal presson system, in Section 19 to

enved no later than the last day for receipt of procession terms.

Tre-application forms are also issued in person floit not received) at all branches of the public library systems in the various beroachs of New York City, Mount Vernon, New Rechelle, White Phins and Yorkers, receipt for firing in person only at the time and place of the written test.

Bute and Place of Test: The written test is expected to be held October 21, 1969. This date is tentative only and may be changed if creumstances to demonst.

Promotion Opposituations: The Administrative

is tentative oily and may be changed if circumstances or demont. Promotion Opportunities: In: Administrative Cole provides that Serge and shall be selected from among Patrolaien of the First Gualt, Sergenuts are circible for premotion, examination to Lightenant; Learnmants are clipible for promotion examination to Capacin.

The in service as a Police Trainer shall not be considered as sovice in the uniformed trace for plason or retirement purpose, not in congenting shortly in a promotion examination, nor in granting advancement in grade as a Patrolman.

Age Reprintments (Patrolman): The Administrative Code provides that only persons shall be appointed Patrolman who shall be on the date of the written but less than 20 years of age; and the Public Concern Law monutes that persons shall be at the 121 years of the all the time of appoints.

Laception: All passess of the all the time of appointments y duty, as defined in Section 23% of the Military, Law, rid appoint to Jime 1, 1 (R), now define the length of time, not exceed the length of time, not exceed the last of six vertex, which they appoint in soon multiple date from their actual are in determining their clashidity (Sult. 10a. Section 134), Military Law), Police Trainer. Candidates must be at least 16 years of ang on the date of the written test and at least 17 years of ang at time of appointment. At the time of investigation, applicants will be repirted by submit panel of date of both by transcend of record of the Burean of Vital Statistics or other satisfaction evidence. Any wilful misstatement may be cosed for degrantication.

Minimum Requirements: At the time of appointment (a) pradication from a four year senior high school course, or (b) passesson of an acceptable high school course, or (b) passesson of an acceptable high school course, or (b) passesson of an acceptable high school curve, or the passesson of an acceptable high school equivalency duploma or U.S. Armedous 18 on each of the five tests and a total score of at least 35 on each of the five tests and a total score of at least 225 in the examination for the diploma or certificate); or (c) certificates of having passed the above examination with those scores.

Open and the Proposition of the control of the Proposition to be provided to the provided and the provided and the provided and the provided and the provided and the provided and the proposition of the proposition and the proposition of the

discretion. Duties of Police Trainer: Following outside the folio and training at the Police Academy, pentime, under direct supervision, routine nonday of forcement tasks in Police Readquarters or field units, performs related work.

Lyampies of Typicel Tests (Police Trainee):

records, documents, correspondence, reports, fifting typice, etc., as ists precinct detections in a clerical capacity, satisfactories of specialized using in their election tasks; operates switch saids.

Tests: Written, weight 100, 75% required.

The written test will be of the multiple of cetype and will be designed to test the candidates type and will be designed to test the candidates to learn the work of a police trained and a portelman. It may include questions on police situations, reading comprehension, arithmetic reasoning and civic awareness.

Candidates who page the written in the rest of the policy o

Grandeles who pres the written test will be required to pass a qualifying physical test. This qualifying physical test new sart on November 17, 1909. No second opportunity will be ground to candidate who fail the squalifying physical test; on the candidate who fail the squalifying physical test; or who fail to appear for the qualifying physical test; or who fail to appear for the qualifying physical test; or who fail to appear for the qualifying physical test; or who fail to appear of crudidates in addition, the physical test will be designed to test the strength, anditry, and power of crudidates in addition, the physical test will take the physical test will be included a test for height. Considiates will take the physical test will be included to seferment them. Medical evidence to allow participation in the physical test may be required and the Department of Personnel receives the inflit to exclude from the physical test may be required and the department of Personnel received to achieve a minimum mark of evidence is apprentic to achieve a minimum nuck of condity. It is all and Physical test in order to condity. It is all and Physical test in order to condity. It is all and Physical tentile in the condity of the condity of the condity of the condity of the condition of the physical test in order to condity. It is all and Physical test in order to condity. It is all and Physical test in order to condity. It is all and Physical test in order to condity. It is all and Physical test in order to condity. It is all the rejected for any deficience with the condition of the physical test in order to condity. It is all the properties of the condition of the physical test in order to condition of the physical test in order to condition.

10/25/67

or prisonal abnormalities or deformities as to specer and appearance as would handcop them in the performance of their duties as a Patropuen.

Candidates who fail to attain the pass much set for any test, subject or part of the examination shall be defined to have failed the examination and no further test, subject, or part of the examination shall be rated.

Candidates are warned to note full and complete statements on their application, blanks and medical prestionnaires, Misregrey nation is ground to disqualification.

Telegram in diet er ogen in de women,

. . . . . . .

Tells extend in the first of a first time to the first very many and the control of the control

the loss of the 19 of the state

908/ foliaromon 10/25/69

7

At the time of approximent by a large from a more, regal me in new York time, or in a term, we entire the control of the contr 1 .....

The usual of the City Civil Corpos Conclusive provide that no name that I wested I have to the same appointing order to the forms or similar position, unless at such officers to the following order to the following.

There appointed as Probationary Policeronal nature serve a probationary period of one of the Police of the Police of the performance of the depertuent; to perform all a bottomal limetoms for the procedures, coders or directives of the Police Department; and to perform social duies or assignments as directed to the Police Commission in the Market of the Police Objective, and the social Witten, weight 100, 75% required. The witten has will be of the multiple directly and will be designed to test the commission of police scenario. The witten has will be of the multiple directly and will be designed to test the commission of police scenario. I may include the logical matter of police scenario. The witten has a police scenario and capacity to learn the work of a police-scenario. The appropriate of the granify of police with the conditions of police scenario. The distribution of the police of the conditions of police scenario. The second of the conditions of police scenario and conscious of police scenario.

Candidates who may the minimal process of the granify of the granify of physical test will be despited to the opposition of the policy of the conditions of the policy of the conditions of the policy of the conditions of the policy of the policy of the conditions of the policy of the conditions of the policy of the conditions of the policy of the conditions of the policy of t

tion. The pertinent sections of the General Evans. Institute Regulations are used to be considered part of this notice.

DEPARTMENT OF PERSONNEL, Socious Sciences, Personnel Director; Grooms II, very Specietary.

CITY OF HIM TORK

· Profile III.a Toma	
commission on Homen Rightst on the complaint of	
Beraldine L. Acha	
Complainant	
-ngainat-	Complaint Ho. 69
Beraldine b. Acha, 15.	
Beraldine b. Acha, 10	
666-3 Avenue - C/O Paris 1	
Mayor Abraham D. Beame, Police Dopl; Mic	hael Codu, Dept. of Perso
Mayor Abraham D. Beame, Police Dopl: Michange Civil Service Commission of City of NY where address is 20 Corp Counsel 1656 Municipal	Bldg, NYC
where address is a contract to the contract to	
with an unlawful discriminatory practice relating	00
1	
May 29 1973 and continuing into pr	esent.
by	s and by terminating my
because of my Race (), Color (), Creed	( ), Hational Orig
because of my made ( ),	Arrest Record ( ),
Physical Handicap (), Age (), Sex (X),	. ( )
Retaliation ( ), Marital Status	
The particulars are:	
1.   was appointed as a police officer/fer	nale on 1
2. On June 27 1975, I received written effective June 30, 1975.	
3. On or about October 25, 1969 I took Cir for the position of police woman. This examine to women. On the same day an identical civil was given for the position of police trainee/	service examination #90

was administered to only men.

<sup>4.</sup> Although the examination numbers were different and the examination were administered in different locations, the examination questions we the same and the examinations were graded in the same tashion. Separa eligibility lists were, nevertheless, established as a result of the texaminations.

yeteran: were and are permitted to raise their score on the examination hus their ranking for appointment solely because of their veteran's .us. This practice had an adverse effect on women and continues to , aversely affect me as fully set forth below.

- During the period 1969 to 1973, no permanent appointments were made from the two lists. In 1973 the two titles were merged, and in opproximately January 1973 normal appointments were commenced.
- However, in the period 1969 to 1973, men were appointed as trainces from the all male list and thus, thereseriority dates from a period when no females were or could have been appointed.
- Although the titles were merged, two separate eligibility lists were maintained. The Police Department determined internally to hive at a ratio of 4 men to 1 woman from the two examination lists regardless of tank on the respective list. Thus, since January of 1973 approximately 1,236 male police officers have been appointed and approximately 513 temale police officers have been appointed.
- Prior to January 1973 there was a "quota" of approximately 154 women in the Police Department, and a "quota" of approximately '90 police women. Prior to 1973 women were not assigned to routine patrol duty but were all assigned to a separate unit for women known as the Police Women's Bureau.
- During the period since 1960 approximately one examination was given every two years for the position of Police Trainee/Patrolman but only two examinations were open to women: a 1964 examination for the position Policewoman and the aforementioned examination for Policewoman, #9081 given in 1969.
- I fulfilled the minimum eligibility requirements for the position of Police Officer prior to 1969 and was willing and able to take an examination for such position but no examination was open to me during the period 1964 to 1969. I would have taken such an examination had it been available to me.
- There are presently approximately 30,374 persons employed by the Hew York City Police Department. 618 are female police officers. 21,669 are male police officers. There is a total of 724 women employed by the Department.
- As a result of the City's fiscal crisis 5,000 persons are to be taid off from the Police Department. 4,000 have, to date, been notified of the lay-offs. Of the 4,000 approximately 371 are female police officers. If of these female police officers were hired after January of 1973 from a sist resulting from the 1969 examination, #9081. These women were the first women to be routinely assigned to patrol duty in the New York olice Department.
- In connection with this layoff, veterans are given additional meanned months of semiority based solely upon their status as veterans. This practice has an adverse effect on women.
- I am among the approximately 371 female police officers due to e terminated in this layoff, based upon my date of appointment.

My date of appointment and therefore the date from which my

return been adversely affected by the aforementioned discriminatory actions because of sex.

1. The proposed Lay offs will operate to perpetuate into the present the effects of respondent's past sex discrimination.

I am a woman . I charge that Respondent have discriminated against me in violation of the Administrative Gode of the City of Hen York and that as a result of Respondents' unlauful discriminatory practices I have suffered expense, loss of countrys, humiliation, outliefe and mental auguish for which I claim compensatory damages.
I have not commenced any action, civil, reiningl or administrative based upon the above allegation other than the following:
**************************************
THE CR HEN YORK)
CONTINUE OF ALC TD SO.: (Signature of Complainme)
Beraldine L. Acha that she is the Complainant herein; that she in a reed the foregoing complaint and knows the contents thereof; that the same is true of her. our knowledge, except as to the matters therein stated on information belief, and that as to these matters. she believes the cone to be true.
Subscribed and sworn to before me
Contents bled in them for County.  ET-Green grants Chapter 1, 1975  Contents bled in them for County.  ET-Green grants Chapter 1, 1975  ET-Green grants Chapter 1, 1975

/1 j

•	Commission on Human Rights on the complaint of	,
	vrlene Egan	
	Complainant	
	-ngainst;- ity of N.Y.; Mayor Abraham D. Beame; Michael Codd; Police Dept.; Dept. of Personnel and ivil Service Commission	Complaint No. 6973-EC
-	Respondents	
,	Arlene Egan	
+	ding at c/o Murray A. Gordon P.C. 666 Third	Avenue-my attorney
·":	above named Respondents	• • • • • • • • • • • • • • • • • • • •
	e address is Corp. Counsel 1656 Municipal B	ulding, New York, N.Y.
.,	on unlawful discriminatory practice relating	
<b>-</b> !1	1 11 11 11 11	
()	or aboutJune 25, 1973 and continuing	
	Applying discriminatory seniority rules ar	
Ъ	· · · · · · · · · · · · · · · · · · ·	ere cornelization my employment
<b>a</b> b	use of my Race (), Color (), Creed	(), National Origin (
i	sical Handicap (), Age (), Sex (x),	Arrest Record ( ),
	Rotaliation ( ), Marital Status	( ).
0/1	particulars are:	
	1. I was appointed as a police officer/	female on June 25, 1973.
•	2. On June 20, 1975, I received written tion, effective June 30, 1975.	notification of my termina-
•	3. On or about October 25, 1969, I took #9081 for the position of police-womadministered only to women. On the service examination #9080 was given	an. This examination was same day an identical civil for the position of police-
	trainee, patrolman. This examinatio	n was administered only to m

- 4. Although the examination numbers were different and the examinations were administered in different locations, the examination questions were the same and the examinations were graded in the same fashion. Separate eligibility lists were, nevertheless, established as a result of the two examinations.
- 5. Veterans were and are permitted to raise their score on the exemination and thus their ranking for appointment, solely because of their veterans status. This practice had an adverse affect on women and continues to adversely affect me as fully set forth below.
- 6. During the period 1969 to 1973 no permanent appointments were made from the two lists. In 1973 the two titles were merged, and in approximately January 1973 normal appointments were comme
- 7. However, in the period 1969 to 1973, men were appointed as trainees from the all male list and thus, their seniority dates from a period when no females were or could have been appointed.
- 8. Although the titles were merged, two separate eligibility lists were maintained. The Police Department determined internally to hire at a ratio of 4 men to 1 woman from the two examination lists, regardless of rank on the respective list. Thus, since January of 1973 approximately 4,236 male police officers have been appointed and approximately 513 female police officers have been appointed.
- 9. Prior to January 1973 there was a "quota" of approximately 354 women in the Police Department, and a "quota" of approximately 290 police women. Prior to 1973 women were not assigned to routine patrol duty but were all assigned to a separate unit for women known as the Police Women's Bureau.
- 10. During the period since 1960 approximately one examination was given every two years for the position of Police Trainec/Patrot man but only two examinations were open to women: 1964 examination for the position Policewoman and the aforementioned examination for Policewoman, #9081 given in 1969.
- 11. I fulfilled the minimum eligibility requirements for the position of Police Officer prior to 1969 and was willing and able to take an examination for such position but no examination was open to me during the period of 1964 to 1969. I would have take an examination had it been available to me.

- 12. There are presently approximately 30,374 persons employed by the New York City Police Department. 618 are female police officers. 21,669 are male police officers. There is a total of 724 women employed by the Department.
- 13. As a result of the City's fiscal crisis 5,000 persons are to be laid off from the Police Department. 4,000 have, to date, been notified of the lay-offs. Of the 4,000 approximately 371 are female police officers. All of these female police officers were hired after January of 1973 from a list resulting from the 1969 examination, #9081. These women were the first women to be routinely assigned to patrol duty in the New York Police Department.
- 14. In connection with this lay-off, veterans are given additional unearned months of seniority based solely upon their status as veterans. This practice has an adverse effect on women.
- 15. I am among the approximately 371 female police officers due to be terminated in this lay-off, based upon my date of appointment.
- 16. My date of appointment and therefore the date from which my seniority accrues is more recent than those dates would have been had I been a man with the same qualifications, skills, and abilities. I have therefore been adversely affected by the aforementioned discriminatory practices because of sex.
- 17. The proposed lay-offs will operate to perpetuate into the present the effects of respondent's past sex discrimination.

I am a woman . I charge criminated against me in violation of the Acot Heu York and that as a result of Respondence tices I have suffered expense, loss of and mental anguish for which I claim compens	mts unlawful discriminator; samings, busiliation, outrop
I have not commenced any action, civil based upon the above allegation other than t	l, criminal or administrative the following:
COUNTY OF MIN WORK)	(Signature of Complainer
Arlene Egan  thatsheis the Complainant her foreigning complaint and knows the contents to of herous knowledge, except as to the unit and belief, and that as to these matters. She true.	oing duly rucen, depends and reing tratashehas reed the decree; that the seconds true core therein stated on infor-
Subscribed and suora to before me	
Comment to the track of the control	(Signature of Complainer
16	

(PTT 151 PK/A - 9E 147)

CHARGE	OF DISCRIMINATION	1111 (1111)		com Acres to
mstructions			CAUSE OF DISCRIMPATION	
19. Starte are surfamed, fill in the Command and it to the Laguer's replayment  (1) Charly Command and Continue (the conjugate in meeting a grading point of the conjugate in the conjugate		INVERTOR NOTES		
and the state of the first of the f	der I I (* 2 william i 12 mb 1 Till to I von 1935 by Alif	there after the di	emmadery act	MILLOLOGS CHILD
	1. ( that extra sheets of )			MALLONAL COLIGIN
The Hadrente Mr. or M				DATE OF BIRTH
777777 1 1 1 1 1 1 1	ine L. Acha	COUNTY		December 18, 1941
c/o Murray 666 Th	A.Gordon, P. C. ird Avenue	New Y	ork	072-32-7273
New Yo	rk, New York 100	017		212/661-7900
	CONTRACTOR OF THE PROPERTY OF	PERSON ALWAY	S KNOWS WHERE	TO CONTACT ME
Murray	A. Gordon, P. C.			212-661-7900
STREET MODILESS	rd Avenue		New York	New York 10017
LIST THE EMPL	OFER, LABOR ORGANIZA	TION, EMPLOY	MENT AGENCY, /	APPRENTICESHIP COMMITTEE, STATE OR
*: AME	NMENT WHO DISCRIMINATE	AINST YO	U (If more than on	e, list all)  TELEPHONE NO. (Include area code)
	of New York			
1656 Muni	poration Counse cipal Building	1	New Yor	k City, New York
OTHER'S MID DISCRIMINATED		ichael J.	Codd, Comm	n., ept. of Personnel and
AGAINST YOU (If any)	Abraham D.Beame	e, Civil S	ervice Con	nmission
CHARGE FILED WITH	DATE FILED	AGENCY CHARGE FIL	ED WITH (Name and	address)
X YES NO	6/25/75	N.Y. C. H	Human Right	s Commission
CHARGE IS FILED AGAIN	30,000	OR UNION THIS	Month, day, and ye	or continuing discrimination took PLACE (ar) 6/24/75
	e use of the United States		ment Opportunity	ted differently. Understanding that this Commission, I hereby certify:
Lower are contition that I have read the all weed not made that it is to set the heast of my kine whether the are the next of my kine whether the are the next of my kine whether the are the next of my kine whether the area and before.  Ohre Configuration Table Tab				
Language arministra				

- 1. I was appointed as a police officer/female on May 29, 1973.
- 2. On June 24, 1975, I received written notification of my termination, effective June 30, 1975.
- 3. On or about October 25, 1969, I took civil service examination #9081 for the position of police-woman. This examination was administered only to women. On the same day an identical civil service examination #9080 was given for the position of police-trainee, patrolman. This examination was administered only to men.
- 4. Although the examination numbers were different and the examinations were administered in different locations, the examination questions were the same and the examinations were graded in the same fashion. Separate eligibility lists were, nevertheless, established as a result of the two examinations.
- 5. Veterans were and are permitted to raise their score on the examination and thus their ranking for appointment, solely because of their veterans status. This practice had an adverse affect on women and continues to adversely affect me as fully set forth below.
- 6. During the period 1969 to 1973 no permanent appointments were made from the two lists. In 1973 the two titles were merged, and in approximately January 1973 normal appointments were commenced.
- 7. However, in the period 1969 to 1973, men were appointed as trainees from the all male list and thus, their seniority dates from a period when no females were or could have been appointed.
- 8. Although the titles were merged, two separate eligibility lists were maintained. The Police Department determined internally to hire at a ratio of 4 men to a woman from the two examination lists, regardless of rank on the respective

Mark County

Commission Expires March 30, 197

thus, since January of 1973 approximately 4,236 male officers have been appointed and approximately 513 female police officers have been appointed.

- Prior to January 1973 there was a "quota" of approximately 9. 354 women in the Police Department, and a "quota" of approximately 290 police women. Prior to 1973 women were not assigned to routine patrol duty but were all assigned to a separate unit for women known as the Police Women's Burcau.
- During the period since 1960 approximately one examination 10. was given every two years for the position of Police Trainee/Patroiman but only two examinations were open to women: 1964 examination for the position Policewoman and the aforementioned examination for Policewoman, #9081 given in 1969.
- I fulfilled the minimum eligibility requirements for the 11. position of Police Officer prior to 1969 and was willing and able to take an examination for such position but no examination was open to me during the period of 1964 to 1969. I would have taken such an examination had it been available to me.
- There are presently approximately 30,374 persons employed by 12. the New York City Police Department. 618 are female police officers. 21,669 are male police officers. There is a total of 724 women employed by the Department.
- As a result of the City's fiscal crisis, 5,000 persons are 13. to be laid off from the Police Department. 4,000 have, to date, been notified of the lay-offs. Of the 4,000 approximately 371 are female police officers. All of these female police officers were hired after January of 1973 from a list resulting from the 1969 examination, #9081. These women were the first women to be routinely assigned to patrol duty in the New York Police Department.
- In connection with this lay-off, veteraes are given additional 111. unearned months of seniority based solely upon their status as veterans. This practice has an adverse effect on women.

2. Commissions Expires March 30, 1977

6/25/75

- 15. I am among the approximately 371 female police officers due to be terminated in this lay off, based upon my date of appointment.
- 16. My date of appointment and therefore the date from which my seniority accrues is more recent than those dates would have been had I been a man with the same qualifications, skills, and abilities. I have therefore been adversely, affected by the aforementioned discriminatory practices because of sex.
- 17. The proposed lay-offs will operate to perpetuate into the present the effects of respondent's past sex discrimination.

Quality 1 150 17 150 2017

Quality 1 150 2017

Quality 1 150 2017

Quality 1 150 2017

Quality 1 150 2017

Quality 1 150 2017

Quality 1 150 2017

Quality 1 150 2017

Quality 1 150 2017

Quality 1 150 2017

Quality 1 150 2017

Quality 1 150 2017

Quality 1 150 2017

Quality 1 150 2017

Quality 1 150 2017

Quality 1 150 2017

Quality 1 150 2017

Quality 1 150 2017

Quality 1 150 2017

Quality 1 150 2017

Quality 1 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Quality 2 150 2017

Sworn to before me this day of June, 1975

Bullen Lake

Micheldin I Ret

CHARGE	OF DISCRIMINATION	tick cuap.	٠.,		oth no. : 24 - R000
to experience of AC 122 County	HP, PVICTION From the transfer to the transfer to the transfer to the transfer to the transfer transfer transfer to the transfer transfer transfer to the transfer tr	end it to the Paper or end, Income time offer the fi- point REA 2000 R		, a charge outery as t	[ ] BATTORN ORIGIN [X] 3.4
Ms. Arle					June 15, 1941
c/o Myrray.	A. Gordon, P. C.	. Nou	, Y	ork	151-32-2561
ITY, STATE, AND ZIE	rd Avenue k, New York 100				212-661-7900
11017			5 KN	OWS WHERE	TO CONTACT ME
Murray	CONTRACTOR OF THE CONTRACTOR O				212-661-7900
TREET AFFRESS				, STATE, AND	VIP CODE
666 Thir					, New York 10017
LOCAL GOVER	of New York				PPRENTICESHIP COMMITTEE, STATE OR e. list all)  [TELEVIONE NO. (lacked area code)
Corporation	Counsel,1657 Mu	unicipalg.	CITY	New Y	ork City
OTHERS MID DISCRIMINATED	Abraham D. Bear	me, Michae	1 J	. Codd,	Dept. Personnel
(If any)	Civil Service	Commission			
ARCE FILED ALTH	DATE FILED	AGENCY CHARGE FIL	ED WI	tu (Name and	address)
X YES NO	6/25/75	N.Y.C. Hu	nan	Rights	Commission
PEROXIMATE NO. OF E	MOLOVEES/MEMORIES OF COMPANY	OR TINION THIS			or continuing discrimination fook PLACE at 6/20/75
			ent	Opportunity	ed differently. Understanding that this Commission, I hereby certify:
6/-3/75	of the two read the at we che of my wavel does, referential changing (Signature)  with to be fore that \$1100 g	en and belief.	NOTARY PUBLIC	Chay, month N	othery Public State of New York  Olary Public State of New York  No. 31-1509617  Qualified in New York County  Cert I d d in New York County  Out at a difficult for you to get a Notary Public to size of our name and must to the District Diffice. The cill notarize the charge for you at a later date.)

- 1. I was appointed as a police officer/female on June 25, 1973.
- On June 20, 1975, I received written notification of my termination, effective June 30, 1975.
- 3. On or about October 25, 1969, I took civil service examination #9081 for the position of police-woman. This examination was administered only to women. On the same day an identical civil service examination #9080 was given for the position of police-trainee, patrolman. This examination was administered only to men.
- 4. Although the examination numbers were different and the examinations were administered in different locations, the examination questions were the same and the examinations were graded in the same fashion. Separate eligibility lists were, nevertheless, established as a result of the two examinations.
- 5. Veterans were and are permitted to raise their score on the examination and thus their ranking for appointment, solely because of their veterans status. This practice had an adverse affect on women and continues to adversely affect me as fully set forth below.
- 6. During the period 1969 to 1973 no permanent appointments were made from the two lists. In 1973 the two titles were merged, and in approximately January 1973 normal appointments were commenced.
- 7. However, in the period 1969 to 1973, men were appointed as trainees from the all male list and thus, their seniority dates from a period when no females were or could have been appointed.
- 8. Although the titles were merged, two separate eligibility lists were maintained. The Police Department determined internally to hire at a ratio of 4 men to 1 woman from the two examination lists, regardless of rank on the respective/

ine respective

Holm 11/ Ban

MARIHA ANGEL

Notary Public S - N w York

Mo. 31-1509617

Qualified in New York County

Cet Fild in New York County

Commission Expires March 30, 197

Tist. Thus, Exhibit J to Complaint approximately 4,236 male officers have been appointed and approximately 513 female police officers have been appointed.

- 9. Prior to January 1973 there was a "quota" of approximately 354 women in the Police Department, and a "quota" of approximately 290 police women. Prior to 1973 women were not assigned to routine patrol luty but were all assigned to a separate unit for women known as the Police Women's Bureau.
- 10. During the period since 1960 approximately one examination was given every two years for the position of Police Trainee/Patrolman but only two examinations were open to women: 1964 examination for the position Policewoman and the aforementioned examination for Policewoman, #9081 given in 1969.
- 11. I fulfilled the minimum eligibility requirements for the position of Police Officer prior to 1969 and was willing and able to take an examination for such position but no examination was open to me during the period of 1964 to 1969. I would have taken such an examination had it been available to be.
- 12. There are presently approximately 30,374 persons employed by the New York City Police Department. 618 are female police officers. 21,669 are male police officers. There is a total of 724 women employed by the Department.
- 13. As a result of the City's fiscal crisis, 5,000 persons are to be laid off from the Police Department. 4,000 have, to date, been notified of the lay-offs. Of the 4,000 approximately 371 are female police officers. All of these female police officers were hired after January of 1973 from a list resulting from the 1969 examination, #9081. These women were the first women to be routinely assigned to patrol duty in the New York Police Department.

Th. In connection with this lay-off, veterans are given additional unearned months of seniority based solely upon their status as veterans. This practice has an adverse effect on women,

Mila My San file

MARIHA ANGEL
Hotary Public St. 1509617
Hotary Public St. 1509617
Qualified in How York County
Cort 1 I d in New York County
Countrission Expires March 30, 197

- 15. I am among the approximately 371 female police officers due to be terminated in this lay-off, based upon my date of appointment.
- 16. My date of appointment and therefore the date from which my seniority accrues is more recent than those dates would have been had I been a man with the same qualifications, skills, and abilities. I have therefore been adversely, affected by the aforementioned discriminatory practices because of sex.

The State of the York County of the Letter Hew York County of the Letter Hew York County Commission Expires March 30, 197

Sworn to before me this 25, day of June, 1975

#### Order to Show Cause

UNITED STATE PISTRICT COURT FOR THE SOUTH PISTRICT

BERALDINE L. ACHA and ARLENE M. EGAN, each individually and on behalf of all other similarly situated,

Plaintiffs,

- ... minst-

ABRAHAM D. P' ME, individually and in his capacity as Mayor of the City of New York, INCHAEL J. CODD, individually and in his capacity as Police Commissioner of the New York City Police Department and THE CITY OF NEW YORK. As a public employer,

Defendants.

ORDER TO SHOW CAUSE

CLASS ACTION

75.civ. 3128

UPOU the summons and complaint herein, the exhibits attached thereto and the affidavits of BERALDINE L. ACHA, ARLENE M. EGAN and GERTRUDE SCHIMMEL, all sworn to the 25th day of June, 1975, and sufficient cause appearing therefor, it is

OPPERED, that the defendants show cause before the United States District Judge KEVIN T. DIFFY, at Room 500 ft of the United States Courthouse for the Southern District of New York, on the 30 day of 1 1975, at 2 o'clock of M. Why an order should not be made herein; pursual fallers of A. I granting appreliminary injunction, pending the hearing and determination of this action, restraining, prohibiting

and stopping the defendants, and their servants, agents and em-

ployees from continuing with the policies and practices of the

#### Order to Show Cause

Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. §1983 and 42 U.S.C. §2000g-2;

- B. granting a declaratory judgment declaring that the policies and practices of the defendants set forth in the complaint herein violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. §1983 and 42 U.S.C. §2000e-2;
- ments herein as well as reasonable attorneys fees.

OPDERED, that no bond or other surety need be posted by plaintiffs:

SUPPLICIENT CAUSE APPEARING THEREFOR, LET service of this order on detendants or their attorneys on or before o'clock on the day of June 1975, be deemed good and sufficient.

Dated: New York, New York June 25, 1975

U.S.D.J.

## Affidavit of Beraldine L. Acha

UNITED STATES GISTRICT COURT	
FOR THE SOUTHERN DISTRICT	
BERALDINE L. ACHA et al.,	
Plaintiffs,	AFFIDAVIT
-again t-	CLASS ACTION
ABRAHAM D. MEAME, et al.,	75 CIV.
Defendants.	
STATE OF NET YORK )  SS:-	
COUNTY OF NET YORK )	

BEPALDINE L. ACHA, being duly sworn, deposes and says:

- entitled action, and I submit this affidavit in support of plaintiffs motion herein for an order temporarily restraining defendants from terminating the employment of plaintiffs and all others similarly situated.
- York, and am presently employed as a Police Officer in the New York City Folice Department, pursuant to a permanent appointment in that capacity in the classified civil service of the City of New York on May 29, 1973.
- amount of morey as my husband, approximately \$13,000 a year.

  I provide the sole support of my 9 year old son by a previous marriage, of whom I have custody.

#### Affidavit of Beraldine L. Acha

- employment with the New York City Police Department will be terminated on June 30, 1975.
- Although I desired to take an examination for employment by the New York City Police Department after 1964 and prior to 1969 there was no examination which I could take during the neriod of lime.
- 6. In 1969 two examinations were given, No. 9080 for the title Police-Trainee/Patrolman and No. 9081 for the title Police-Toman. I took examination No. 9081.
- Although two separate examinations were announced and administered separately the examination questions were the same and the examinations were graded in the same fashion. Separate eligibility lists were nevertheless, established as a result of the two examinations.
- 8. There was a job freeze on hiring by the New York City Felice Department in effect from approximately 1970 to 1973. When the job freeze was lifted in January 1973, I was appointed to the force on May 29, 1973.
- 2. On January 1973 the titles of Patrolman and Policewoman women merged into the title of Police Officer. Men and women appointed to the Department subsequent to 1973 underwent the same medical examination and received the same training at the Police Academy.

#### Affidav t of Beraldine L. Acha

- this country and am not eligible for veterans credits.
- 11. The termination of my employment on June 30, 1975 would result in the loss of half of our family income and would disable to from supporting my 9 year old son. It would further result in my suffering discrimination on the basis of sex.
- rently approximately 30,374 active, uniformed members of the New York City Police Department, of which approximately 21,669 are male Police Officers and 618 are female Police Officers.

  Of the approximately 513 female Police Officers appointed from January of 1973 there are less than 450 who have remained on the Force.

Sworn to before me this

25 day of June, 1975.

Budden L. Acha

### Affidavit of Arlene M. Egan

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT

BERALDINE L. ACHA, et al.,

Plaintiffs.

-against-

ABRAHAM D. BEAME, et al.,

AFFIDAVIT

CLASS ACTION

75 Civ.

Defendants.

STATE OF NEW FORK )

COUNTY OF NEW YORK )

APLENE M, EGAN, being duly sworn, deposes and says:

- 1. I am one of the plaintiffs in the above entitled action, and I submit this affidavit in support of plaintiffs' metion herein for an order temporarily restraining defendants from terminating the employment of plaintiffs and all others similarly situated.
- 2. I am a resident of the City and State of New York, and am presently employed as a Police Officer in the New York City Police Department, pursuant to a permanent appointment in that capacity in the classified civil service of the City of New York.
- 3. I am divorced and have custory of my 14 year old son whom I support. My salary is my sole source of income.
- employment with the New York City Police Department will be terminated on Inne 30, 1975.

### Affidavit of Arlene M. Egan

- Although I desired to take an examination for employment by the New York City Police Department after 1964 and prior to 1969 there was no examination which Icould take during that period of time.
- for the title Police Trainee/Patrolman and No. 9081 for the title Police Trainee/Patrolman and No. 9081 for the title Police Trainee/Patrolman and No. 9081
- 7. Although two separate examinations were announced and administered separately the examination questions were the same and the examinations were graded in the same fashion. Separate eligibility lists were nevertheless, established as a result of the two examinations.
- 8. There was a job freeze on hiring by the New York City Police Department in effect from approximately 1970 to 1973. When the job freeze was lifted in January 1973, I was appointed to the force on June 25, 1973.
- 9. On January 1973 the titles of Patrolman and Policewoman rere merged into the title of Police Officer. Men and women appointed to the Department subsequent to 1973 underwont the same medical examination and received the same training at the Police Academy.
- this country and am not eligible for veterans credit.
- I'. The termination of my employment would result in the lass of the sole source of my income and would a roy

## Affidavit of Arelene M. Egan

my ability to support myself and my 14 year old son. It would furthermore subject me to discrimination on the basis of sex.

rently approximately 30,374 active, uniformed members of the New York City Police Department, of which approximately 21,669 are male Police Officers and 618 are female Police Officers.

Of the approximately 513 female Police Officers appointed from January of 1973 there are pless than 450 who have remained on the Force.

MARINA ANGEL

MARINA ANGEL

M. tary Politic State of New York

No. 31-1509617

Auditified in New York County

Control Fill on New York County

Expires March 30, 197

ARLENE M. EGAN.

Sworn to before me this

25 day of June, 1975.

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT BERALDINE I ACHA and ARLENE N. EGAN, et al.,

Plaintiffs.

-against-

COUNTY OF NEW YORK

ABRAHAM D. PFAME, et al.,

Defendants.

STATE OF NEW YORK SS:- AFFIDAVIT

CLASS ACTION

75 Civ.

GERTRUDE SCHIMMEL, being duly sworn, deposes and says:

- 1. I have been employed by the New York City Police Department since 1940 and am currently an Inspector and Commanding Officer of the New York City Police Department Public Information Division.
- 2. Upon information and belief commencing on or about May 21, 1975, plaintiffs and members of their class were notified that their services with the New York City Police Department are to be terminated on June 30, 1975.
- 3. Upon information and belief the defendants plan to terminate the services of approximately 5,000 police officers. As of June 24, 1975, 4,000 notices had been given; approximately 371 to female Police Officers. When the final 1,000 notices are given, it is expected that the employment of approximatel, all the female Police Officers appointed since

February of 1973 will be terminated.

- rently approximately 30,000 active, uniformed members of the New York City Police Department, of which approximately 22,120 are serving in the rank and title of Police Officer. There are approximately 21,500 male Police Officers and approximately 620 female Police Officers. There are approximately 724 women in total currently employed in the uniformed force of the New York City Police Department.
- 5. Upon information and belief, prior to January 1973 there was a quota limited to approximately 354 women in the uniformed ranks of the New York City Police Department, with a quota of 290 women in the rank and title of Policewoman.
- 6. Upon information and belief, prior to January 1973, women entering the ranks of the uniformed force of the New York City Police Department served in the title of Policewoman and men in the title of Patrolman. It was only in 1973 that the two titles were merged into the title of Police Officer.
- 7. Upon information and belief, prior to 1973, the vast majority of women appointed to the uniformed force of the Police Department were initially assigned to the Bureau of Policewomen, whereas men were assigned to various precincts throughout the Cityl.
- Upon information and belief, prior to 1969 different examinations were given for the titles Policewoman and Patrolman. Examinations for the title of Policewoman were given in 1964 and 1969. During the same period, a greater number of examination. The given for the title Patrolman.

examination one given, No. 9080 for the title Police Trainee/
Patrolman, and No. 9081 for the title Policewoman. Although
two separate examinations were announced and the examinations
were administered separately, the examination questions were
the same and the examinations were graded in the same fashion.
Separate eligibility lists were established as a result of the
two examinations.

- freeze on hiring by the New York City Police Department in effect from approximately 1970 to January 1973. When the job freeze was lifted in January of 1973, it was determined by the then Police Commissioner Patrick V. Murphy that men and women should be appointed from existing lists at a ratio of four men to one woman.
- Upon information and belief, all of the women appointed to the New York City Police Department subsequent to January 1973 were appointed from a list established as a result of examination No. 9081; men were appointed from five different lists, one of which was examination no. 9080.
- 17. Upon information and belief, since January
  1973 approximately 4,000 male Police Officers have been appointed
  and approximately 500 female Police Officers have been appointed,
  but these numbers of Police Officers in the Department have since
  been reduced by terminations and resignations.

13. Upon information and belief, men and women appointed to the Department since 1973 had received the same training and have been assigned to the same duties and responsibilities including uniform patrol duty.

Sworn to before me this

25 day of time, 1975...

JEFFREY ( ZEEPING )
NO. 1915 F7
Qualified in from cick County
Commission Eq. 1976

#### Affidavit of Marina Angel

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
BERALDINE 1. ACHA, et al.,

Plaintiffs

-again !-

ABRAHAM D. BEAME, et al.,

Defendants.

AFFIDAVIT

CLASS ACTION 75 CIV.

STATE OF NEW YORK )

(COUNTY OF NEW YORK )

MARINA ANGEL, being duly sworn, deposes and says:

- Gordon, P.C.. attorneys for plaintiffs herein. I submit this affidavit in support of plaintiffs' application for the issuance of a temporary restraining order and a preliminary injunction enjoining and restraining defendants from terminating the employment of plaintiffs and members of their class as female Police Officers employed by the New York City Police Department (hereinafter "Police Department").
- 2. If a temporary restraining order and preliminary injunction is not granted, plaintiffs and members of their class will suffer irreparable damage. Such termination of employment would be in violation of the Due Process and Equal Protection Clauses of the Constitution of the United States and 42 U.S.C. \$\$1983 and 2000e-2, since such terminations would result in

#### Affidavit of Marina Angel

employment to plaintiffs and members of their class is of major concern. One plaintiff contributes approximately half of the family income and the other plaintiff is the sole support of herself and the primary support of her minor child. In this respect the named plaintiffs are representative of the class.

- 3. Should the Court fail to grant the remedy requested, plaintiffs and members of their class will have suffered from discrimination on the basis of sex and will have suffered furthermore severe monetary loss which will result in an inability to support themselves and their families.
- With respect to the requirement that plaintiff show a reasonable probability of success, in the final outcome of this litigation, I believe that the facts sworn to in the affidavits of plaintiffs demonstrate beyond cavil that they shall success. Our accompanying memorandum of law demonstrates that the overwhelming weight of the law is on their side.
- 5. Plaintiffs respectfully request that this

  Court waive the requirement that they post security. Plaintiffs are persons of modest income and do not have sufficient assets to be able to purchase a bond of any significant amount.
- 6. This motion is brought on by order to show cause rather than by notice of motion because defendants have not yet appeared and because the need for prompt injunctive relief to prevent irreparable damage to plaintiffs. On information and belief, the following charts represent the situation which has

#### 54a Affidavit of Marina Angel

existed in the New York City Police Department and which will exist as of July, 1975 if the proposed lay-offs occur:

### CHART #1

## COMPOSITION OF POLICE DEPARTMENT AS OF DECEMBER 28, 1972

# of remale Approximate Size % of FRO Police Officers of Uniformed Face

223 (active) 29,532 (active) 00.75% (active) 290 (quota) 30,816 (quota) 00.94% (quota)

### CHART #2

## COMPOSITION OF POLICE DEPARTMENT AS OF JUNE 12, 1975

618 (active) 30,374(active) 2.03%(active) quota unknown 35,219(quota)

### CHART /3

## COMPOSITION OF POLICE DEPARTMENT AS OF JULY 1, 1975

Total Unif. Force # of Female Police # of Male % Female | Officers Police Officers Folice Officers

26,374 347 18,040 1.32%

#### CHART #4

## APPOINTMENTS TO POLICE OFFICER: JANUARY 1973 TO DATE

#### CHART #5

## PERCENTILE REDUCTION IN POLICE OFFICERS TOTAL BY SEX

Female Police Female Police Officers % of Female Police Officers Term.

As of June 1975 Officers Term.

371 618 60.03%

Male Police Male Police Officers % of Male Police Officers Term. As of June 1975 Officers Term.

3.629 21,669 16.75%

## Affidavit of Marina Angel

- 7. On June 25, 1975, at 2:55 P.M. I telephoned the Office of the Corporation Counsel of the City of New York and informed Mr. Leonard Bernikow, Assistant Corporation Counsel in Charge of General Litigation, that an application for a temporary restraining order would be made at about 1:30 P.M. on June 26, 1975 at the Office of the Clerk, Room 602, Foley Square, Federal Court Building, New York City, New York.
- 8. No prior application has been made for the relief sought in this application.

MARINA ANGEL

Sworn to before me this

26th day of June, 1975.

Catherine Sippiger

Motary Public, State of New York
No. 41-1062850
Qualified in Queens County
Commission Expires Metch 30, 1977

### Affidavit of Ronald H. Shechtman

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT

BERALDINE L. ACHA and ARLENE M.

LGAN, each individually and on behalf of all other similarly situated,

AFFIDAVIT

Plaintiffs,

against

75 Civ. 3128

ADREAM D. BEAME, individually and in his capacity as Mayor of the City: of New York, MICHAEL J. CODD, individually and in his capacity as: Police Colmissioner of the New York City Police Department and THE CITY: CF NEW YORK, as a public employer,

Defendants.

STATE OF NEW YORK ) SS.:

COUNTY OF NEW YORK )

•

RONALD H. SHECHTMAN, being duly sworn, deposes and says:

- I am associated with the firm of MURRAY A.

  GORDON, P.C., attorneys for plaintiffs in the above entitled

  action. This affidavit is submitted in support of plaintiffs'

  policusion for a temporary restraining order and preliminary

  injunction herein.
- 2. Annexed hereto as Exhibit "A" is a copy of the Sworn Personnel Data Report of the New York City Police Department dated June 12, 1975. Annexed hereto as Exhibits "B" and "C" respectively are copies of the same Personnel reports, dated February 1, 1973 and December 28, 1972.
- forth the same data as hereinbefore submitted in the affidavit of Marina Angel, Esq. The revisions below, however, include female officers assigned as detectives, since their rank and title remain that of Police Officers The foregoing data is limited to the composition of the uniformed force in the Police Officer, as that rank and title are the required entry level

#### Affidavit of Ronald H. Shechtman

to the uniformed force of the Police Department:

#### CLARC #1

				A TOT OTT	112/20/721
COMPOSITION	OT.	KAN.	z' L L L	CELLCER	(12/20/12)

of Females	Total	% Females
282 (active)	25,210(accive)	1.12%
388 (quota)	26,414(quota)	1.34%

#### CLLERO 32

## POSITION OF RANK POLICE OFFICER (6/12/75)

530 (accive)	25,936(active)	2.62%
cuota unknown		

#### CHART 93

## COMPOSITION OF RANK POLICE OFFICER (7/1/75)

309(active)	21,936(active)	1.41%
309 (active)	21,750 (400100)	

#### Call 32 94

## APPOINTMENTS TO POLICE OFFICER: JANUARY 1973 TO DATE

of Male	w of Female	Total	% Female Police
Police Officers	Police Officers		Officers
.,246	513	4,759	10.78%

#### CHARC #5

#### ELDUCTION IN POLICE OFFICERS BY SEX

Pamale Police Officers Term.	Female Police Officers as of time, 1975	Percentage
371	680	54.6%
Male Police Officers Term.	Male Police Officers as of June 1973	Percentage
3.629	25,256	14.4%

It must be here noted that the data set forth above are not based on mere allegations of plaintiffs or upon information and belief, but are rather derived from sworn personnel statements of Officers of the New York City Police Department. Those statements, we believe, are used for budgetary purposes, as well as for the purpose of determining open positions

### Affidavit of Ronald H. Shechtman

for appointments and promotions to and in the uniformed force.

unequivocal discriminatory impact on female Police Officers, resultant from the proposed lay-offs by defendants herein. As more fully set forth in the prior affidavits herein submitted, appointments, assignments and employment opportunities in the New York City Police Department have been historically limited for female applicants and members, and the effect of these lay-offs by defendants will perpetuate and exacerbate discriminatory policies which have obtained in the New York City Police Department.

RONALD H. SHECHTMAN

SWORN TO BEFORE ME THIS 30TH DAY OF JUNE, 1975.

RIFKIE REICH
Notary Public, State of New Yo.'
No. 24—01KE4603205
Qualified in New York County
Commission Expires March 30, 1970

UNITED STY Affidavit of Cornelius J. Behan

FOR THE SOUTH OF DISTRICT OF MEST YORK

BERALDINE L. ACHA and ARLENE M. EGAN, EACH individually and on behalf of all others similarly situated,

Plaintiffs,

- against -

AFFIDAVET 75 Civ 3128

ABRAHAM D. BEAME, individually and in his capacity as Mayor of the City of New York, MICHAEL J. CODD, individually and in his capacity as Police Commissioner of the New York City Police Department, and THE CITY OF NEW YORK, as a public employer,

Defendants.

\_\_\_\_X

STATE OF NEW YORK:

SS.;

COUNTY OF NE' YORK:

COPMELIUS J. BEHAN, being duly sworn, deposes and says:

I have been Chief of Personnel, New York
City Police Papartment since February 7, 1974. In that
capacity, I am responsible for all personnel matters, including
the determination and filling of personnel needs throughout
the Police Department, the hiring and termination of personnel,
and all personnel relations activities. I make this
affidavit in apposition to plaintiffs' motion for a
preliminary injunction restraining defendants

### Actidavit of Cornelius J. Behan

during the condency of this action from laying off female police officers.

continuing bridgetary crisis, the Mayor ordered the termination of thousands of municipal workers under the crisis budget, including 6,329 police officers. Of these 6,529 officers, 525 are being laid off to close the budgetary gaps for the fiscal year 1974-1975. The remaining number are to meet the cut in the executive budget for the Police Department for this fiscal year 1975-76. Of the above mentioned 6,529 police officers, approximately 500 are female police officers.

3. The executive budget for the Police Department, by direction of the Mayor, has been cut by 126.9 million. Since approximately 93% of the Police Department's Executive Budget is for Personnel costs, the cut of 126.9 million therefrom necessitated the laying off of 6,529 police officers.

4. The schedule of these layoffs was made by the New York Cit: Department of Personnel, pursuant to Section 80 of the Civil Service Law, which requires such layoffs to be made in inverse order of appointment date.

5. The effect of these layoffs will be to reduce the police force by approximately 25%:

male

000

118

male

## Affidavit of Cornelius J. Behan

- set out by Section 80 of the Civil Service Law, the Department has been formed to lay off officers with appointment dates as far back as March, 1969. This seniority date precedes by six months the date that the Department of Personnel last administered separate examinations for the positions of patrolman and policewoman. Accordingly, all police officers who took examination numbers 9080 and 9081 were subject to the terminations to be effective June 30, 1975.
- 7. If this Court were to grant plaintiffs' motion for a preliminary injunction enjoining the termination of the approximately 500 female police officers presently scheduled for lay off, the department would be forced to lay off at least 500 other police officers, which officers have been on the force for over six years.
- year that the Department is delayed in terminating these 500 officers to complete its required total of 6,529 officers to be laid off, the Department will at some point in the remainder of this fiscal year have to make up the financial cost thereof,i.e., per diem cost times 500 officers, times numbers of days delay.

  Naturally, some delay is inherent in assembling any additional list of officers to be terminated. Depending upon the extent of such delay, the above mentioned cost might have to be made up by terminating more than 500 additional police officers.

#### Affidavit of Cornelius J. Behan

officers with at least six years service with the Department, in addition to the 25% depletion of the police force overall, will further debilitate the Department's ability to provide adequate police protection and the attending services thereto.

- amongst the 6,529 officers scheduled for layoff had no sexually discriminatory motive. It was the result of the Department's compliance with Section 80 of the Civil Service Law, which calls for layoffs in inverse order of seniority. Moreover, it was totally consistent with the Police Department's present policy of treating all of its police officers identically.
- Department, on its own, determined that the needs of the Department could best be met by having one job title of police officer, open to both men and women. Accordingly, the Department of Personnel gave one examination, (No. 3014) consisting of identical written, physical and medical requirements for all candidates for police officer.
- It should be noted that, after an intensive minerity /recruitm of program, approximately 3 times as many males as females took examination number 3014. This fact is consistent with the fact that approximately 3 times as many males took the previous 1969 examination number 9080, as females took the 1969 examination number 9081.

## Affidavit of Cornelius J. Behan

Accordingly, your deponent submits that the Police Department not only has acted in complete accordance with the statutory mindate regarding the terminations, but has been completely responsive on its own to the changing social patterns of the last few years.

WHERETOFORE, your deponent respectfully urges that plaintiffs' motion for preliminary injunction be denied.

CORNELIUM J. BEHAN

Sworn to before me this 27th day of June, 1975

Notary Public

Notary Public Property
No Property
Opening County
Commission Property
Commission Prope

STATE OF HEM Affidavit of James M. Sullivan COUNTY OF HEM YORK

BERALDINE 1. ACHA and ARLENE M. EGAN, EACH individually and on behalf of all others similarly situated,

Plaintiffs,

- against -

AFFIDAVIT
75 Civ. 3128

ABRAHAM D. REAME, individually and in his capacity as Mayor of the City of New York, MICHAEL J. CODD, individually and in his capacity as Police Commissioner of the New York City Police Department, and THE CITY OF MEW YORK, as a public employer,

Defendants.

\_\_\_\_X

STATE OF NEW YORK :

: 55.:

COUNTY OF NEW YORK :

DEBUTY CHIEF JAMES M. SULLIVAN, being duly sworn, deposes and says:

- 1. I am the Executive Officer, Office of the Deputy Commissioner Administration, New York City Police Department. and the chief fiscal officer of the New York City Police Department.
- of the Expense Paiget of the New York City Police Department.
  - 3. I have been advised by counsel that the

#### Affidavit of James M. Sullivan

injunctive relief demanded in the above entitled action would, if grante!, probibit the lay-off of some 500 female police officers

- As set forth in the accompanying affidavit of the Chief of Personnel of this Department, Cornelius J. Behan, the result of such action by the court, would in all likelihood require that the Department terminate the services of another group of 500 male police officers.
- 5. Using the seniority system set forch by Section 80 of the Civil Service Law, further lay-offs of police officers would effect first grade police officers with at least four years of service.
- 6. For the fiscal year 1975-76, the rate of compensation for first grade police officers will be approximately \$20,000.00 per officer. This figure includes:

Base Salary	\$17,458.00
Helday Allowance	737.00
Uniform Allowance	265.00
Night Shift Differential	961.00
Wolfare Benefits	400.00
Armunity Payments	261.00

TOTAL \$20,082.00

7 In order to prevent the lay-offs of 500 first grade police officers \$10,000,000.00 in additional expense

## Affidavit of James M. Sullivan

budget moni would be required by this Department should an injunction to ordered by this Court.

- 8. On information and belief the City of New York would be unable to advance these sums or any part thereof to this Department.
- 9. In the likely event this action by plaintiffs is unsuccessful on the merits as is demonstrated by defendants memorandum of law, then defendants will be liable to those officers wrongfully discharged in the sum of at least \$10,000,000.00.

WHEREFORE, I respectfully concur in defendants request that plaintiffs post security in the form of a bond indemnifying the City of New York in the sum of \$10,000,000.00

DEPUTY CHIEF JAMES SULLIVAN

Sworn to before me this

30th day of June, 1975

Notary Public

Tiotary Public, Son Control
No. 43 11.
Qualified in Lichal Control
Commission Exercises

i	eobr
2	UNITED STATES DISTRICT COURT
3	SOUTHERN DISTRICT OF NEW YORK
-4	x
5	Beraldine L. Acha, Arlene M. Egan, etc., :
6	Plaintiffs, :
7	vs. : 75 Civ. 3128
9	Abraham D. Boams, oto
9	Defendants. :
10	x
11	Before:
12	HON, KEVIN THOMAS DUFFY,
13	District Judge
14	New York, June 30, 1975 Room 1506 - 2:15 p.m.
15	APPEARANCES:
16	Ronald H. Shechtman, Esq.,
	Attorney for Plaintiffs
17	Gary D. Frost, Esq., Assistant Corporation Counsel
18	Nancy Siegel, Esq., Assistant Corporation Counsel Lt. Mathew Byrne, Esq.
19	
20	
21	
22	
23	
21	

(Case called.) MR. SHECHTMAN: Plaintiff is ready. THE COURT: Defendant ready? MR. FROST: Yes, your Honor. THE COURT: Let me hear from counsel for Miss Acha and Miss Egan. MR SHECHTMAN: Your Honor, my name is Ronald II. 9 Shechtman, appearing on behalf of the plaintiffs herein. 10 I am associated with the firm of Murray A. Gordon, P.C. 11 It is my understanding that last Thursday you 12 referred the attorneys for the parties herein to the case 13 of SEC v. Frank. 14 I think it would be appropriate now to make refer-15 ence to that case and discuss that case as indeed as 16 applicable here. 17 There the Second Circuit considered the appropriateness of a temporary restraining order issued prior to a hearing 18 on the facts and cited three general categories or situations 19 which were relevant to its determination, two of which con-20 cerned factual postures which the Court said need not, in 21 fact would not require generally a hearing or full exposition of the facts prior to the issuance of a temporary restraining 23

The final category or situation, which was

order.

24

25

2	referred to, was one which the Court found indeed would
3	require some hearing, some exposition of the facts before
1	the Court could at all rule.
5	That last situation was clearly not here before
6	the Court, was one involving a sharp dispute as to facts.
7	They were in direct contradiction, they raised serious
8	issues which first had to be resolved before the merits
9	could be judged.
10	That is not the case here. Particularly
11	appropriate today is the affidavit of the plaintiffs that
12	I believe will be filed with this Court, Luse me, the
13	affidavit which the defendants will be filing
14	THE COURT: Have you got an affidavit?
15	MR. BYRNE: Yes, sir.
16	THE COURT: You haven't filed it?
17	MR. FROST: We didn't have service, your Honor.
18	THE COURT: You have got service now. Give it to
19	him.
20	MR. FROST: I gave it to them. I will give it to
21	you.
22	MR. SHECHTMAN: An an additional affidavit on behali
23	of plaintiffs.
24	THE COURT: All right. What you are telling is you
25	don't think it is necessary to have an evidentiary hearing?

2	MR. SHECHTMAN: That is correct.
3	THE COURT: Okay, fine, I understand you.
4	Mr. Gross.
5	MR. GROSS: Yes, your Honor.
6	THE COURT: Have you gentlemen considered stipulat-
7	ing the facts?
8	MR. FROST: No, your Honor, we haven't.
9	MR. SHECHTMAN: I believe such might be done in a
0	matter of short course.
1	The facts relied upon are those provided basically
2	by the City of New York and the Police Department.
3	THE COURT: Do you want to bet? Do you want to
4	stipulate the facts?
5	Mr. Frost, are you willing to stipulate?
16	MR. FROST: Your Honor, I have discussed that pos-
17	sibility, but if I might, I would like to state our position
18	on that for the moment and that is that even assuming
19	arguenão, as plaintiffs have alleged, that there has been some
20	form of past sexual discrimination that the cause of
21	action before your Honor is one that addresses Section 80
22	of the Civil Service Law and in some form that doesn't come
23	out directly stated that the application of that statute
24	is violating certain due process and equal protection rights
25	of the plaintiffs.

2 The position of the city would be that we are 3 following a bona fide seniorty system --4 THE COURT: And that any attack upon that section 5 should be brought under Tible 28, United States Code, 6 Section 2284, is that correct? 7 MR. FROST: That is correct. 8 THE COURT: That is what I thought you were going 9 to say. 10 MR. SHECHTMAN: Your Honor, if I may interrupt. 11 Counsel for the City has also given us a memorandum of law 12 where they are taking the position that a three-judge court 13 is not appropriate here. THE COURT: Sure, but they are arguing if we are 15 wrong in that, we ought to have a three-judge court anyway, right? It is what is known as inconsistent defenses. 17 MR. SHECHTMAN: May I address that issue, your 18 Honor? 19 THE COURT: Sure. That is what I am here for. 20 I want you to educate me. 21 MR. SHECHTMAN: Firstly, I think it is both 22 inappropriate and inaccurate to characterize this case 23 as a challenge on Section 80 of the Civil Service Law.

What is really at issue here is a local

particular and specific application of the statute where

24

25

local officials, rather than state officials, are parties herein.

I respectfully refer the Court to Griffin v.

The School Board of Prince Edward County, 377 U.S. 218,

where there the state passed certain statutes which allowed

Prince Edward County to close down an entire school system

in that county.

The Supreme Court found that because it was not a statewide application, because it was a local application of the statute, of local interest, that a three-judge court was not appropriate.

Likewise, Moody v. Flowers, another Supreme Court decision, dealing with a state statute again with purely a local effect and this being a statute determining the composition of a county governing board, the Supreme Court found that a three-judge court was not appropriate and that it was not of such statewide or state effect to require the convention of a three-judge court.

Conversely, Sailors v. Board of Education involved again county government structure except there it was applicable to all the counties within the state and the state statute was being applied on a statewide basis, there the Supreme Court did hold that a three-judge court to be necessary.

2	
3	
3	County Committee again involved what the court called a
4	narrow state action, it did not call for the convention of
5	a three-judge tederal court.
6	THE COURT: Counsel, cutting through it, do you
7	believe that the layoffs here are different or in contra-
8	vention of Section 80 of the Civil Service Law?
9	MR. SHECHTMAN: They are not in contravention of
10	Section 80 as I understand it.
11	THE COURT: So we have two questions basically.
12	The first one is whether Section 80 is facially valid
13	and the second one is whether it is valid as applied,
14	right?
15	As to the question of facial validity, do you think
16	that it is not?
17	MR. SHECHTMAN: The attack here would be limited
18	to its application in the particular circumstances.
19	THE COURT: Okay, fine.
20	Now, have you had an opportunity to go through the
21	affidavit and memorandum submitted on behalf of the Corpor-
22	ation counsel?
23	MR. SHECHTMAN: Very briefly, only a moment.
24	THE COURT: How mary witnesses do you have?
25	MD CHINCHMAN. At this time there was a

2	as to whether a hearing would, in fact, be necessary.
3	THE COURT: We are going to stipulate to the facts.
4	MR. SHECHTMAN: I believe we will be in a position
5	to stipulate to the facts.
6	THE COURT: How long will it take for you and
7	Mr., Mr.Frost, how long will it take for you to sit down and
8	stipulate these facts?
9	MR. FROST: Your Honor, I would not have any
10	THE COURT: Do you have to get Mr. Richland's con-
11	sent?
12	MR. FROST: I would have to confer with the
13	Police Department.
14	THE COURT: Lieutenant Byrne, is that right?
15	MR. BYRNE: Yes, your Honor.
16	THE COURT: You are here basically as the legal
17	adviser to the Commissioner, is that correct?
18	MR. BYRNE: Yes, your Honor.
19	THE COURT: Did you talk to him before you left?
20	MR. BYRNE: Yes, your Honor.
21	THE COURT: Are you in a position to set out what
22	the facts are?
23	MR. BYRNE: I can stipulate to the facts as
24	contained in the affidavits submitted by Chief Bowan as well
25	as a supporting affidavit from Chief Sullivan T think thay

2 accurately set forth the posture of the department. 3 THE COURT: I am quite sure that those affidavits 4 were drawn up by you and you are a good lawyer. Would you 5 believe you argue the facts like they won't quit, agreed? 6 MR. BYRNE: I am sorry, I didn't hear you. 7 THE COURT: Read it. 8 (Read.) 9 MR.BYRNE: I would agree with that, your Honor. 10 THE COURT: Now, I will give you guys fifteen 11 minutes. You are not to leave this courtroom. You are to 12 sit there and figure out a stipulation of facts. Do you 13 understand me, gentlemen? 14 Unfortunately, this is one of these cases that 15 must be decided almost immediately. 16 Mr. Shechtman, the police women involved are to be 17 laid off as of the close of business today? 18 MR. SHECHTMAN: That is correct, your Honor. 19 THE COURT: I assume that is 5 o'clock? 20 MR. SHECHTMAN: Whenever their tour of duty 21 would have been scheduled. Some would have been on an 22 earlier tour. This is not a 9 to 5 job. 23 THE COURT: Mine isn't either. 21 MR. FROST: Your Honor, I might say one thing

following along the theme of cutting through everything.

25

### Transcript of Hearing

If for the moment we were to assume the position that in the past there had been some finding of secual discrimination as the facts relate to the Jersey Central case cited in our brief where there definitely was a finding of racial discrimination, there the issue was not what happened in the past but how the bona fide seciority system affected the present and they said although it did affect or have a greater impact on the blacks that since it called for a bona fide system --

THE COURT: Mr. Frost, I am sorry, I am going to cut you off. The basic determination made in any of these cases depends upon the facts. Each and every case depends upon the determination of the facts. I have recognized that what you are trying to do and what your opponent is trying to do is to point out to me that there are certain cases which are analgous, but I really don't want to hear about them until after such time as you guys have 15 minutes to stipulate to the facts.

MR. FROST: Your Honor, not to postpone the case one bit.

THE COURT: I am not postpoing it either.

MR. FROST: I understand the importance, but

I don't think I am in a position to stipulate --

THE COURT: Call yourfirst witness.

2	Do you want to try to stipulate or do you want to
3	call your first witness? Com one, get him up here,
4	who is he?
5	MR. FROST: It is the plaintiffs' case, your Honor.
6	MR.SHECHTMAN: We will defer on the basis
7	MR. FROST: It is not my motion.
8	THE COURT: Call your first witness. Do you want
9	to try to stipulate or not?
10	MR. FROST: My statement was
11	THE COURT: Do you agree to the facts as set out
12	by the plaintiff?
13	MR.FROST: If we might have one moment, your
14	Honor?
15	THE COURT: No, now.
16	I am willing to give you 15 minutes to get this
17	thing in proper fashion and apparently you don't want to
18	take it. Call your first witness.
19	MR. FROST: Your Honor, I will attempt to stipulate
20	in 15 minutes and we will then see where we are.
21	THE COURT: You had best. All right, we will take a
22	15-minute break.
23	(Recess.)
24	(In open court.)
25	THE COURT: 75 Civil 3128. Beraldine Acha v.

2	Abreham D. Beame.
3	I have a belief that possibly some of the facts
4	might have been stipulated.
5	MR. SHECHTMAN: I think some of them, your Honor.
6	THE COURT: Good.
7	MR.SHECHTMAN: Maybe we could run through them.
8	My list indicates that it is stipulated that there
9	were two police women examinations conducted strike that -
10	that there was a police woman examination conducted in 1964.
11	THE COURT: So stipulated?
12	MR. FROST: So stipulated.
13	MR. SHECHTMAN: A police woman's examination
14	conducted in 1968.
15	MR. FROST: So stipulated.
16	MR. GHECTMAN: That in 1973 the title "Police
17	Woman" and policeman was merged into police officer?
18	THE COURT: Lieutenant Byrne, how about it?
19	MR. BYRIE: For the purpose of the Budget Bureau
20	the titles were not merged. Internally within the
21	department they were merged into one title.
22	THE COURT: We are agreed as to that stipulation.
23	MR. SHECHTMAN: In 1973 a police officers
24	examination was given for which applicants
25	THE COURT: Let me get it drawn. Stipulated?

2	MR. FROST: Yes, your Honor.
3	MR. SHECHTMAN: And for that examination both men
4	and women were eligible.
5	MR. FROST: Yes, your Honor.
6	MR. SHECHTMAN: And were given positions on
7	eligible lists according to their relative performance
8	on that examination?
9	MR. FROST: Yes, your Honor.
10	MR. SHECHTMAN: With respect to
11	THE COURT: Hold on. Without regard to their
12	sex, right?
13	MR. SHECHTMAN: We will stipulate to that.
14	MR. FROST: Yes, your Honor.
15	THE COURT: Okay.
16	MR. SHECHTMAN: With respect to the 1964 and
17	1968 examinations for police woman there were more than two
18	examinations for the position of policeman given in the same
19	period.
20	THE COURT: There was a '64 and a '68 examination
21	according to the plaintiffs' lawyer for police woman.
22	He also claims that during the period from
23	'64 to '68 there were more than just two examinations
24	for policeman.
25	MR. FROST: We would use the term patrolman.

2	THE COURT: Sure, stipulated. Go ahead.
3	MR. SHECHTMAN: That for each of the 1974 and
4	1968 examinations the written tests were identical to written
5	tests given for the title of patrolman.
6	MR. FROST: Yes, your Honor.
7	THE COURT: Do you know, Mr. Frost? Check with
8	Lieutenant Byrne.
9	MR. FROST: These are things we conferred on.
10	THE COURT: You agree, that is the fact?
11	MR. SHECHTMAN: However, as part of those exam-
12	inations there were defferent and distinct physical and
13	medical tests with different height standards among other
14	standards.
15	MR. FROST: Yes, your Honor.
16	MR. SHECHTMAN: That for the 1973 examination
17	there were no distinct or different physical and medical
18	tests or height and other such standards between men and women
19	candidates.
20	THE COURT: Is that true, counsel?
21	MR.FROST: Well
22	THE COURT: I have a certain amount of doubt about
23	it.
24	MR. FROST: We would have a great deal of
25	difficulty stipulating to that, your Honor.

2	THE COURT: Is it a little bit too broad,
3	counselor? Believe it or not
4	MR. SHECHTMAN: Possibly I can narrow it down.
5	THE COURT: Do you want to back up? The physical
6	examination of a woman is different than the physical
7	examination of a man.
8	MR. SHECHTMAN: The standards for the physical
9	examinations were identical for both sexes.
10	MR. FROST: Your Honor, without having someone
11	here who actually conducted that test from the city, the
12	Department of Personnel of the Police Department, there
13	is nobody present in court today that could possibly
14	stipulate to that fact.
15	THE COURT: All right.
16	The 1973 examination both physical and written
17	was intended by the city to be as equal as possible for both
18	men and women. Could you stipulate to that?
19	MR. FROST: Yes, we would, your Honor.
20	THE COURT: Okay, fine.
21	Counsel, do you object to that?
22	MR.SHFCHTMAN: Could I hear that read back,
23	please?
24	THE COURT: Sure, read it back.
25	(Read.)

2	THE COURT: Did you get it?
3	MR. SHECHTMAN: When given, yes.
4	THE COURT: When given, sure. Co ahead.
5	MR. SHECHTMAN: We have also had a stipulation
6	that the sworn personnel data, forms entitled "Sworn
7	Personnel Data" annexed to the complaint here as Exhibits B,
8	C, D and E and dated, respectively, February 1, 1973,
9	June 12, 1975, December 28, 1972 and February 8, 1973
10	represent reasonably accurate data with respect to the
11	composition of the New York City Police Department?
12	THE COURT: Mr. Frost, it si your documents.
13	I assume when counsel for plaintiff says that it is reasonably
14	accurate you would agree to that, wouldn't you?
15	MR. FROST: Reasonably accurate, right, yes.
16	THE COURT: Okay.
17	MR. SHECHTMAN: I believe we can always
18	stipulate that a total of approximately 6,529 persons
19	in the rank, in the current rank of police officers are
20	as ofnow contemplated to be laid off.
21	MR.FROST: Your Honor, we would stipulate to that
22	and just add in there that that is pursuant to the
23	crisis budget which has not finally been made.
24	MR.SHECHTMAN: I have no knowledge as to the
25	motion.

2	THE COURT: All right, it doesn't much matter. I can
3	draw a reasonable inference. Go ahead.
4	MR. SHECHTMAN: We can further stipulate that
5	approximately 500 of those 6,529 are or will be women.
6	MR. FROST: Your Honor, that figure, although the
7	plaintiffs originally in their paper used 371, we used 500
8	because it is not clear how many of those women actually
9	left the job so we used the outside figure of 300 as the total
10	impact that could possibly occur, but it is not completely
11	clear at this time.
12	MR. SHECHTMAN: We will accept that.
13	THE COURT: If you produce witnesses they would
14	testify to approximately 500.
15	MR. FROST: At this time, yes, sir.
16	THE COURT: Stipulated.
17	MR SHECHTMAN: That exhausts what we were able
18	to exhaust. I believe if we were toproduce witnesses
19	there are certain other facts that might be adduced here.
20	THE COURT: Come on now.
21	MR. SHECHTMAN: Mr. Frost, do you have the
22	complaint?
23	MR. FROST: I will in a moment, your Honor.
24	THE COURT: Open it up to page 8-B.
25	MR.FROST: Yes, your Honor.

2	THE COURT: Have you got it?
3	. MR. FROST: Yes, your Honor.
4	THE COURT: Leiutenant Byrne, look over his shoulder.
5	MR. SHECHTMAN: WE have revised those. I think
6	it would be more helpful to the Court
7	THE COURT: You mean you have changed them?
8	MR.SHECHTM. Only to reflect a clearer picture.
9	If you look at the a ic vit submitted today and the copy of
10	the city I believe that is the same
11	THE COURT: Have you got the affidavit, page 2?
12	MR. GROSS: Yes, your Honor.
13	THE COURT: As of December 28, 1972 would the city
14	be willing to stipulate that the quota of female police
15	persons was 355 out of a total of 26,414 or thereabouts?
16	MR.FROST: Your Honor, the only way I would have
17	of comparing that would be to the charts that we would look
18	at as exhibits to the cplaint and we have already stipulated
19	that those reasonably represent the figures.
20	THE COURT: They reasonably represent them. You think
21	that those personnel data sheets really do reasonably
22	represent the figures, is that correct?
23	MR. FROST: Yes, your Honor.
24	THE COURT: Fine.
25	All right, counsel, what else do you want to

prove?

MR. SHECHTMAN: We will stand on those figures and then in addition, your Honor, we believe it can be perferences established that the written tests for patrolman and the written test for police women are identical but because of the quotas, which are set forth in the Police Department reports, that in fact men who received lower scores by reason of those examinations were appointed prior to women because of the quota limitations in the department.

Secondly, that all policewomen were assigned or passed through the police women's bureau and were not as a matter of course assigned to regular patrol duties prior to 1973.

Moreover, that in the period in which there were two examinations for police women there were five different examinations for either patrol officer or a classification called patrol police trainee.

During the period of a job freeze under the Lindsay

Administration between 1969 and 1973 no women were hired into

the entry level of the uniformed force of the Police Depart
ment while, however, men in the title of police officer

trainee were in fact hired into that position and subsequent
ly placed in the position of police officer or patrol

officer as of reaching the age of 21.

3

6

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

amended.

No such opportunity was available to the women. hiso that credit on these examinations for purpose of standing on eligible lists included veterans preference for service in the armed forces and during the relevant periods here there was a draft to which women were not subjected and, accordingly, did not receive veterans preferences on any eligib : list established for the ? lice Department and which credit is also applicable to seniority for the purposes of layoff. THE COURT: Now wait a second. Are you going to tell me that your clients were discriminated because they weren't drafted? That is a little tough to take. MR. SHECHTMAN: The effect, however, of veterans preference as applied I think is just relevant for the record here. I don't think it is disp sitive of the instant issue. THE COURT: I am not saying it is. On the other hand, isn't it true that there were women's -- better word corps in all of the armed services during this period of time? MR. SHECHTMAN: I believe they were including only those enlisted and I believe there were limited quotas. THE COURT: Wait until equal protection has been

1.4

and let me see if I can cut through it: Your position is that women were discriminated against in the hiring for the police force for the period prior to 1973. Because of that discrimination they ended up with the least seniority. Because they have the least seniority of Section 80 of the vil Service Law they are the first to go and in fact it works a double discrimination against them.

One, they were unable to obtain the jobs at the beginning and, two, that they are the first to go, right?

MR. SHECHTMAN: Precisely.

THE COURT: Nice tight argument. Let me hear what you have to say. Do you want to say something.

MR FPOST: Your Monor, first of all, as I said to you before, although we have stipulated certain facts, there are others that we would look to stipulate such as and it only occurred to me afterwards and that is why in that 15 minutes we didn't come to it that three times the number of males took the 1973 exam as females; that this number was consistent with the amount of males that took the same exam No. 9080 as compared with the female exam of 9081 so that there was some basis --

THE COURT: You don't want to stipulate to that,

do you?

Believe it or not, it is necessary.

MR. SHECHTMAN: I think it is irrelevant, exactly.

THE COURT: Go ahead.

MR. FROST: The small concise statement that you gave as to plaintiffs' position we agree with, but our defense to that is that although we are not stipulating to any past discrimination that even if you were to find that, that that is not in the present posture of this case nor the type of relief that plaintiffs are seeking and I think that is the one thing that we have kind of forgotten here is that the relief --

THE COURT: I didn't forget it.

MR. FROST: So that the relief they are seeking is that they plan to remain in their positions and as we have stated in our affidavits, that will cause that many more male patrolmen with more experience to be laid off, in other words, who have greater seniority.

Our position is that based on a bona fide seniority system, which Section 80 is, that we are following the statute and the statute has state application. The economic situation in the city is causing us to operate under that statute and it may cause other cities if they haven't already and I don't know that not to be true that Buffalo or

some --

10

11

12

13

14

15

17

19

20

23

24

25

THE COURT: Go ahead. Would you believe I filed a decision on the Department of Transportation this morning. Go ahead.

MR. FROST: So that the other position that we would take is that this is a preliminary injunction. I imagine we are at the hearing stage and as I am sure your Monor is well aware, one or the elements of proving a preliminary injunction or granting a preliminary injunction would be a showing of irreparable harm. There has been no showing by plaintiffs' counsel of irreparable harm.

If you apply the balancing of equities test that the balance surely falls in the city's favor and we have so stated that in our affidavits and we have asked that a bond be issued if such injunction were to be ordered.

We also feel that there has been at this time no true showing of likelihood of success. That would be it, your Honor.

THE COURT: All right.

Miss Siegel, do you want to be heard?

MISS SIEGEL: Your Honor, I would just like to take this opportunity to distinguish two cases that plaintiffs have relied on and did rely on on the last time we met on Thursday where the Detroit Police Department case and the Lloyd

case. Some sort of interlocutory relief was given on behalf of plaintiffs pending final determinations.

I would just like to note that in the Lloyd case which involved the Cleveland Police Department the local Civil Service Rule had already been stepped aside from by the city in application to the layoffs of minorities and that quota system had not been applied when the issue came to the layoff of women. In this instance the Police Department and the City Department of Personnel has not stepped aside from Section 80 in determining any schedule of layoffs as relevant hereto.

In the Detroit Police Department case prior findings had been made establishing discriminatory hiring and promotion practices but more important the preliminary injunction that the Court did order as regarding the layoffs effectuated the situation whereby not only were fewer police officers to be laid off and not only were the police officers to which the order was directed, which were not laid off, federally funded police officers, but no officer male or female who had not originally been scheduled to be laid off was laid off as a result of the Court's order. As we pointed out briefly, that would not be the case if this Court were to enjoin the scheduled layoffs as is.

Thank you.

.1

THE COURT: Lieutenant Byrne.

MR.-BYRNE: Your Honor, the plaintiffs' memorandum of law indicates as the question presented whether the use of seniority as a basis for terminating the employment, et cetera.

The seniority system that they are referring to is contained in Article 80 of the Civil Service Law.

We have no discretion under that existing statute to lay off in any other order but inverse order of seniority.

I submit that the plaintiffs would appear to be inferentially attacking the validity of the statute without articulating that attack.

moving to dismiss the action in view of the fact that it was not brought under title 28, Section 2284, is that correct?

MR. FROST: 2284, right, your Honor.

THE COURT: Both sides agree that I can draw whatever reasonable inferences I please from the stipulated facts? You have to agree.

MR. FROST: Certainly we do and I am sure as your Monor is aware that that would only shift the burden to the city for the defendants to come up with some type of a basis for their actions in the past.

2	THE COURT: I don't know what you said. Read
3	it back.
4	MR. FROST: What I am saying, your Honor, is
5	THE COURT: Read it back.
6	(Read.)
7	THE COURT: Do you want to excise part of that?
8	MR. FROST: I might want to explain it.
9	THE COURT: Sure, go ahead, explain it to me.
10	MR. FROST: I thought your Honor's statement
11	implied that the inferences that you can draw, since basically
12	the stipulations are as to statistical facts and that it would
13	shift the burden to the defendants to come up with some either
1.1	rational basis or compelling state interest by the defend-
15	ants.
13	THE COURT: I am with you now. Okay, I under-
17	stand.
18	All right.
19	MR. FROST: It takes me a few times, but I make
20	it
21	THE COURT: It takes me a few times sometimes, too,
22	but don't worry about it.
23	Go ahead.
24	MR. FROST: Before we got into that, you had
25	asked me about whether we were moving under that section and

2	I said yes, we were for failure to state a substantial type
3	of question.
4	THE COURT: Do you have any other motion?
5	Make them now if you have got any.
6	MR. FROST: Well, the motion to deny under that
7	section to deny any form of temporary restraining order
8	and the motion to deny the preliminary injunction that I think
9	the plaintiffs have moved for.
10	THE COURT: Okay. Counsel.
11	MR. SHECHTMAN: A few points.
12	THE COURT: Do you have any motions?
13	MR. SHECHTMAN: We renew our application.
14	THE COURT: Absolutely. You don't need to
15	renew it. That is the one I am going to be handling.
16	MR. SHECHTMAN: It might be helpful for the Court
17	if I told the Court to note the case of Hagans v. Levine,
18	415 U.S
19	THE COURT: Is this in your brief?
20	MR. SHECHTMAN: No, it is not. This is in your
21	response to three-judge jurisdiction which point we seem
22	to have returned to. This is a 1974 Supreme Court ruling.
23	We believe exactly on point with respect to the juris-
24	diction of the District Court here and yourself over the

instant dispute with reference to a three-judge court basically

on the theory of the existence of a substantial constitutional question and the pendant jurisdiction of this Court over a statutory claim here under Title 7 and we believe the case speaks directly here.

Secondly, if I may, your Honor, and again refer your attention to the affidavit we submitted today if we can correct some statistics that are very important on that chart in light of the new information --

THE COURT: Which one is there?

MR. SHECHTMAN: The most jpdated chart on page 2 of my affidavit.

Chart No. 3 on the basis of the information
we have received today as to the number of layoffs should
be amended to -- the title should be "Composition of Rank Police
OfficerFemale" and by today's statistics it indicates that 180
will remain, this is as of 7/1/75 out of a total force of
19,407 leaving in the rank of police officer female point
93 per cent.

Chart No. 5 percentage reduction of police officers by sex, female officers terminated 500. Male police officers terminated 6029.

Percentage of female officers terminated -THE COURT: You say 6029?
MR. SHECHTMAN: Right.

2	Thus that the per cent reduction in female
3	police officers will be 73.5.
4	Percent reduction in male police officers will be
5	25.9 per cent.
6	THE COURT: Okay.
7	Anything else?
8	These layoffs are supposed to take place today,
9	is that correct?
10	MR. BYRNE: Yes, sir.
11	THE COURT: Thanks.
12	All right, gentleman, I will try and get a decision
13	to you as fast as I possibly can.
14	I assume that neither one of you would waive
15	findings and conclusions, is that correct?
16	MR. SHECHTMAN: That is correct.
17	MR. FROST: Yes, your Honor.
18	THE COURT: You are not going to waive it?
19	MR.FROST: No.
20	THE COURT: I didn't think so.
21	Allright. I will do it as fast as I can and get it
22	to you.
23	Coursel, I want to see both of you in the robing
24	room.
25	(Time noted: 3:45 p.m.)

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

BERALDINE L. ACHA and ARLENE M. EGAN, each individually and on behalf of all others similarly situated,

Plaintiffs, :

OPINION AND ORDER

75 Civ. 3128

-against-

ABRAI BEAME, individually and in his capacity as Mayor of the City ot New York; MICHAEL J. CODD, individually and in his capacity as Police Commissioner of the New York City Police Department, and THE CITY OF NEW YORK, as a public employer,

Defendants.

#### APPEARANCES:

MURRAY A. GORDON, P.C. Attorney for Plaintiffs By: Marina Angel, Esq. Of Counsel

HONORABLE W. BERNARD RICHLAND Corporation Counsel Attorney for Defendants By: Gregory D. Frost, Esq. Nancy E. Siegel, Esq. Of Counsel

KEVIN THOMAS DUFFY, D.J.

tiffs on behalf of themselves and other female police officers to stay their threatened dismissal in the New York City police force. The dismissal is proposed by budgetary cutbacks and is to be conducted under Section 80 of the N.Y. Civil Service Law (McKinney 1973) which basically requires that those employees hired last will be first to be laid off in the event of a reduction in force. The action is brought under 42 U.S.C. §§ 1983 and 2000e-2, along with claimed deprivation of rights under the due process and equal protection clauses of the Fourteenth Amendment of the United States Constitution.

plaintiffs request class determination but have not moved for the appointment of a three judge court pursuant to Section 2284 of Title 28 U.S.C.

plaintiffs contend that from 1963 to 1969, no women were permitted to take a competitive examination for the position of policewoman (since that time the title "police officer" has been construed to cover both males and females.) However, in 1969, a Civil Service test was given for the post of policewoman and starting in 1972, appointments were made of the named plaintiffs and members

of a class. During the same period, at least five examinations were given for policemen, and it is claimed by the plaintiffs that this situation produced discrimination against females on the New York City police force.

The layoffs now proposed will reduce the number of females on the police force by 73.5 per cent, while only 23.9 per cent of males will be discharged.

found in Jersey Central Power & Light Co. v. Local Union 327, etc., 508 F.2d 687 (3d Cir. 1975), and in Waters v. Wisconsin Steel Works, 502 F.2d 1309 (7th Cir. 1974). In both of these cases racial discrimination was claimed whereby blacks were discharged under a personnel cutback which occurred after an effort to alleviate the employer's former racially discriminatory hiring practices. The cutback came when the employer attempted to follow a recognized bona fide seniority system whereby those last hired were first to be relieved of their duties. In both cases the circuit courts held that such a seniority system was permissible.

The fact that the case at bar is bottomed on sexual discrimination does not alter the underlying prin-

ciple which permits such a seniority system as approved by Section 80 of the New York Civil Service law. Indeed, such is the mandate of the Congress, found in Section 2000e-j of Title 42 U.S.C., which prohibits "ary employer . . . to grant preferential treatment to any individual or any group because of . . . . . . . . . . . . . . . To issue the order sought by the plaintiffs in this case would be directly contrary to that section and to the teachings of other circuits. Under the circumstances, the injunctive applications of the plaintiffs will be denied and the cause will be dismissed.

SO ORDERED.

U. S. D. J.

Dated: New York, New York
July 1, 1975.

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

BERALDINE L. ACHA, and ARLENE M. EGAN,
each individually and on behalf of all
others similarly situated,

Plaintiffs,

-against
ABRAHAM D. BEAME, individually and in

NOTICE OF APPEAL

Class Action 75 CIV 3128

Defendants.

his capacity as Mayor of the City of

New York, MICHAEL J. CODD, individually

and in his capacity as Police Commissioner of the New York City Police Department and THE CITY OF NEW YORK, as a public

SIRS:

enployer.

Notice is hereby given that BERALDINE L. ACHA and ARLENE M. EGAN, each individually and on behalf of all others similarly situated, hereby appeal to the United States Court of Appeals for the Second Circuit from the order denying plaintiffs' motion for a preliminary injunction restraining and prohibiting defendants and their agents, servants and employees from terminating the employment of any female Police Officer employed by the New York City Police Department, and from the final judgment in all respects, herein entered on the 1st day of July,1975.

Dated: New York, New York July 2, 1975

: Kina St Chekk

YOURS

Ronald H. Shechtman

TO: Corporation Counsel of the City of New York.

MURRAY A. GORDON, P.C. Attorneys for Plaintiff 666 Third Avenue New York, New York, 10017 212-661-7900

101a Letter Dated July 30,1975 MINIMAR A ! HOOM, I' C 1.1 1. 1.00 6 /1 100/ 11 74 16 10 1 1 15/11 1 THE FE THE COT SE ST. M. DOLDINAS MILITA COL July 30, 1975 The Honorable District Judge Kevin T. Duffy United States District Court Southern District United States Courthouse Foley Square New York, New York 10007 Hon, Judge Duffy: Pursuant to my telephone conversation of July 29, 1975 with your law secretary and with Fr. Raymond F. Burghardt, the Clerk of Court, 1 am enclosing herewith a proposed judgment in the aboveestitled action which provides for the denial of the application of the plaintiff for a preliminary injunction and dismissal of the complaint with leave to amend. We are respectfully requesting leave to amend the complaint in order that we may be enabled to add, as a separate count, a factu... situation which obtains here and comes within that aspect of the July 16, 1975 decision of the United States Court of Appeals for the Fifth Circuit in Watkins v. United Steel Workers, No. 74-2604, rev'g 369 F. Supp. 121 (E.D. La. 1974), wherein it is indicated that remediation by way of seniority preference is available at the instance of those members of a minority group who can demonstrate that hey are victims of the discrimination which it is sought to remediate by such preference. We are enclosing a copy of watkins for your convenience. The Police Department notices of dismissal, which caused this action to be brought, were effective June 30, 1975 and were still being served on June 24, 1975. The summons here is dated June 26, 1975 and the plaintiffs' motion for relief was returnable and heard on June 30th. The circumstances compelled expedition, and the pleadings and proof tend to reflect the speedy processing of this complex matter by the plaintiffs. There is, therefore, whent from the pleading a sufficiently explicit development of facts showing that a substantial number of the members of the class represented by the plaintiffs were subject to and victims of the past discriminatory hiring practices in the New York City Police Department which resulted in the lesser seniority of such female police officers and in their current earlier dismissal and later potential reinstatement than the male police officers who benefitted from

## Letter Dated July 30, 1975

THAT A GORROOT

The Hon. District Judge Kevin 5. Duffy July 30, 1975 Page No. 2

such discrimination. Such facts, according to Watkins, would entitle plaintiffs here to relief, and the cases cited in this Court's decision of July 1, 1975 are not to the contrary. While we believe that the complaint here may be capable of construction so as to constitute the plaintiffs and others in the class as individual victims of past discrimination entitled to relief from such past discrimination as caused them to have lesser seniority (see Complaint paragraphs 25, 32; see also Acha aff. paragraphs 5 - 10 and Egan aff. paragraphs 5 - 10), the circumstances under which the complaint was drawn, and the guidance only very recently provided by Watkins, make it imperative that an opportunity be provided to plead the precise facts which would bring action within the scope of the remediation contemplated by Watkins.

The facts intended to be pleaded in the amended complaint would demonstrate that a substantial number of the class represented by the plaintiffs here were direct victims of past actions of discrimination in the Police Department. Prior to January 1973 the number of women in the New York City Police Department was infinitesmal, -- approximately 1% of the department force resulted from a quota of approximately 350 women in the entire department. In addition, before 1969 many more examinations were given for men than for women seeking almission to the department, and in the 1969 examination women were again discriminated against by reason of a lower eligibility age for men and opportunities for men to be appointed as trainees denied to women. Even after 1973 men were appointed from 5 different lists, women from one. We are now able to add that during the period preceding 1973, -- the earliest date at which it may be argued that hiring discrimination came to an end in the New York City Police Department, -- substantial numbers of the class would have been eligible to take and would have taken exeminations for appointment to the department if not for the described discriminatory practices. We intend to allege and establish from the dates of birth of dismissed women, and other data, which of them would have been of an cliqible age (and otherwise eligible) to take the examinations confined to men; which would have been eligible to compete for the trainee examinations confined to men; and which were otherwise discriminated against by reason of the pre-1973 quota of women. Such a showing would, pursuant to Watkins, warrant appropriate relief, and we seek leave to make such a showing.

The submission of a proposed judgment is here appropriate notwithstanding the July 1, 1975 decision of the Court. Once aware of <u>Watkins</u>, we had intended to seek leave to amend the pleadlings by way of a post-judgment motion under Rules 59(e) and/or

103a Letter Dated July 30, 1975 THAT A CHIEFICH The Hon. District Judge Kevin . Duffy July 30, 1975 Page No. 3 60(b), F.R. Civ. Pro., joined with a motion for leave to amend pursuant to Rule 15(a). See Market v. Swift & Co., 173 F. 2d 517 (C.A. 2, 1949); United Grocers Co. v. Sau-Sea Foods, Inc. 151 F. Supp. 260 (S.D.N.Y. 1957). In the preparation of such a motion we checked the docket and learned for the first time on July 29 that no judgment had been entered. It would, therefore, be inappropriate at this time to proceed by way of any postjudgment motion, and all of the considerations we intended to raise upon such a motion are properly before this Court upon the instant application for the proposed judgment which has been submitted. Nor is it necessary to proceed by motion under Rule 15(a) to amend the pleading since, once again, any matters implicated by such a motion are covered by the judgment to be entered. We are aware that a notice of appeal has been filed. But that does not affect this Court's jurisdiction over the judgment here proposed. For an appeal from a judgment is predicated upon entry of that judgment (28 U.S.C.A. Section 2107), and here no entry of judgment was made by the Clerk who alone can do so (Rules 58, 79(a), F.R. Civ. Pro.). Whatever effect the notice of appeal may have with respect to this Court's interlocutory order denying provisional relief, it does not bring any non-entered judgment up for appeal and leaves open for this Court its normal and regular authority to fashion a judgment. And even if the pendency of the appeal is deemed relevant to the disposition of the present application, this Court is empowered to request the remittitur of the appeal by the Court of Appeals to this Court for such purpose (Baltimore S.S. Co. v. Phillips, 9 F. 2d 902 (C.A. 7, 1925); see also Market v. Swift & Co., supra) and such a process is herewith respectfully requested if the appeal is deemed viable at this time as to the judgment. Respectfully yours, MURRAY A. GURDON, P. C. MAG: hs cuc. cc: Raymond F. Purghardt, Clerk of Court Corporation Counsel, Attorney for defendants

To Work

LAW DEPARTMENT

MULT AL BUILDING

NEW | RK, N. Y 10007

August 7, 1975

The Honorable Kevin T. Duffy
Urited States District Court
for the Southern District of New York
United States Courthouse
Foley Square
New York, New York 10007

Re: Beraldine L. Acha, et al. v. Abraham D. Beame, et al. 75 Civ 3128

Dear Judge Duffy:

In reference to the letter of July 30, 1975 to you from Murray A. Gordon, Attorney for plaintiffs in the above-captioned matter, the City defendants herein urgently oppose both the substance and the procedure of plaintiffs' request for leave to amend their complaint.

Plaintiffs submit that the recent decision in Watkins v. United Steel Workers, No. 74-2604 (5th Cir. July 16, 1975), "indicated that remediation by way of seniority preference is available at the instance of those members of a minority group who can demonstrate that they are victims of the discrimination which it is sought to remediate by such preference." Defendants are compelled to respond with that Court's own words:

We specifically do not decide the rights of a laid-off employee who could show that, but for the discriminatory refusal to hire him at an earlier time than the date of his actual employment, or but for his failure to obtain earlier employment because of exclusion of minority employees from the work force, he would have sufficient seniority to insulate him against layoff. (Emphasis added.)

BNA Daily Labor Report 7/18/75 No. 139 p. 2.

## Letter Dated August 7, 1975

To: The Honorable Kevin T. Duffy Page 2

August 7, 1975

In addition counsel's letter states that "The cases cited in this Court's decision of July 1, 1975 are not to the contrary." In fact, Waters v. Wisconson Steel Works 502 F 2d 1309 (7th Cir. 1974) dealt directly with the question of the application of a bona fide seniority system to plaintiff Waters, who had, in fact, suffered prior discrimination. Having affirmed the District Court's finding of prior discrimination in hiring practices by the defendant, the Circuit Court nonetheless upheld the bona fide seniority system under the language and legislative history of Title VII. Similarly, in Jersey Central Power & Light Co. v. Local Union 327 et al., 508 F 2d 687 (3d Cir. 1975), the court upheld the bom fide seniority system despite its disparate impact on women and minorities who had recently been hired pursuant to a conciliation agreement with EEOC. The conciliation agreement, of course, came about after a charge of discrimination in violation of Title VII was filed and the EEOC investigation found reasonable cause to believe there was discrimination in hiring and job assignments.

Accordingly, the Watkins decision provides no basis for a decision contrary to the July 1, 1975 decision of this Court. In fact, Watkins is further support for that decision to the extent it upholds a bom fide seniority system based on the facts before it. And, there is no basis in that decision of any remediation through fictional seniority.

As to plaintiffs' procedures for seeking leave to amend through a proposed judgment, defendants respectfully refer the Court to Swan v. Board of Higher Education, 319 F 2d 56 (2d Cir. 1963). In that case an opinion was entered on the clerk's docket book but the clerk had failed to prepare and file a separate document embodying the order, pursuant to Rule 10 of the General Court Rules for the Southern District. The Court in Swan held that nothing in Rule 15a of the Federal Rules of Civil Procedure suggests an exception to its terms for the failure of the clerk to perform a ministerial function. The Court discussed the purpose of the clerk's function as to avoid delay in initiating post-judgment proceedings that might be caused by inadvertence of the district judge in neglecting to direct the clerk to formally enter a judgment. 319 F 2d 56, 61.

Accordingly, the Court, stating that the issue was determined on the day the opinion was filed with the words "So ordered", and entered in the clerk's docket books, held that plaintiff knew the decision that day and could have moved to amend instead of filing a notice of appeal. Plaintiff therein was seeking to capitalize on a

### Letter Dated August 7, 1975

To: The Hone able Kevin T. Duffy August 7, 1975
Page 3

mere clerical error which in no way affected his rights. Defendants urge that, at least, Swan is dispositive of the issue of plaintiff's proposed judgment herein by which plaintiffs seek the Court to order leave to amend and therefore requires plaintiffs to move for such leave. However, in addition defendants submit that there is no basis for that leave to be granted.

Although leave to amend may be granted liberally under the federal rules, its purpose is to afford the maximum opportunity for a claim to be decided on the merits, rather than procedural technicalities. In re Credit Industries Corp. 250 F. Supp. 582 (D.C.N.Y. 1966), aff'd, in part, rev'd in part 366 F 2d 402, 411 (2d Cir. 1966); Brown v. Dunbar, et al. 189 F 2d 871, 875 (2d Cir. 1951). However, the Court is not required to indulge in a futile gesture such as where the complaint, as amended, would be subject to dismissal. DeLoach v. Woodley, 405 F 2d 496, 497 (5th Cir. 1969). Since a dismissal is with prejudice unless the Court specifies otherwise, Asher v. Harrington, 461 F 2d 890, 895 (1972), if, as here, the allegations of other facts present no other issue than that passed on by the Court, the Court need not allow such amendment to the complaint. Bonanno v. Thomas, 309 F 2d 320 (9th Cir. 1962); Fuhrer v. Fuhrer, 292 F 2d 140,143 (7Cir.1971)See also, Asher, supra.

Thus, defendants urge that as the opinion and order were filed by the clerk of the Court on July 2, 1975, the ministerial error resulting in no docketing of a separate order and judgment pursuant thereto under Rule 10 of the General Pules cannot, under Swan and moreover, should not be used against defendants to allow the amendment of the complaint as of right. Moreover, there is no basis under a Rule 15a, 59e or 60b to warrant such amendment to allege additional facts because of the decision in Watkins, supra. The issue before this Court and upon which its July 1,1975 decision was based is in no way affected by that decision.

Should this Court grant plaintiff's request, defendants hereby renew their motion to dismiss this action. Although this Court did not order the parties to "settle order", and defendants submit it is unnecessary under Rule 10, supra, in light of plaintiffs' submission of a proposed judgment, defendants include herewith their proposed counter-judgment.

Sincerely,

W. BERNARD RICHLAND Corporation Counsel Attorney for Defendants

By: Were. S. Faller

107a

# Letter Dated August 7, 1975

To: The Honorable Kevin T. Duffy August 7, 1975 Page 4

Enclosure

cc: Murray A. Gordon Attorney for Plaintiffs

Raymond F. Burghardt Clerk of the Court

#### Proposed Counter-Judgment

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BERALDINE L. ACHA and ARLENE M. EGAN, each individually and on behalf of all other similarly situated,

Plaintiffs,

-against-

ABRAHAM D. BEAME, individually and in his capacity as Mayor of the City of New York, MICHAEL J. CODD, individually and in his capacity & Police Commissioner of the New York City Police Department and the CITY OF NEW YORK, as a public employer,

PROPOSED COUNTER-JUDGMENT

75 Civ 3128

Defendants.

This action came on for hearing before the Court, Honorable Kevin T. Duffy, District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

It is Ordered and Adjudged

that the application of plaintiffs for
a preliminary injunction be denied, and

that the action herein be dismissed.

Dated: New York, New York August , 1975

Clerk of Court

U.S.D.C.

109a Letter Dated August 15, 1975 Lugust 15, 1975 The Honorable Wovin T. Duffy United States District Court Southern District of New York United States Courthouse Foley Square New York, New York 10007 Beraldine L. Acha, ct al., v. Abraham . Beame, et al., 75 Civ. 3128 Honorable Sir: We are submitting this letter in response to that of the Assistant Corporation Counsel, dated August 7, 1975, concerning plaintiffs' proposed judgment in the above entitled matter. Defendants counsel contends that Watkins v. United Steel Workers, No. 74-2604 (5th Cir. July 16, 1975), "provides no basis for a decision contrary to the July 1, 1975 decision of this Court." We respectfully submit that counsel is in error in her analysis of Watkins, and that the proposed judgment of plaintiffs with leave to amend the complaint will allow the presentation of valid, substantial and triable issues of fact and law with particular respect to the class of plaintiffs who were victims of past discrimination and have accordingly been injured by reason of defendants' action herein at issue, As evident in the excerpt of Watkins cited by defendants' counsel, the Fifth Circuit specifically did not decide the rights of employees laid-off under a seniority system because of their prior discriminatory exclusion from the work force, and ruled that remediation for such employees was not necessarily, or by binding precedent, precluded under Title VII. Plaintiffs herein propose to amend their complaint to raise specifically the issue of the entitlement to relief of the class or subclass of plaintiffs, who have been effectively denied seniority credit or tenure because of discriminatory hiring practices which precluded or deferred their employment. The Court in Watkins found that neither

### Letter Dated August 15, 1975

The Honorable Hevin T. Duffy August 15, 1975 Page No. 2

Waters v. Wisconsin Steel Works, 502 F2d 1309 (7th Cir. 1974), nor Jersey Central Power & Light Co. v. Local Union 327, 503 F2d 687 (3d Cir. 1975), were dispositive of the entitlement of such plaintiffs to relief under Title VII.

The Court in Watkins also found that the seniority system there at issue was not in violation of 42 USC 51931 in the specific circumstances there presented precisely and only because of the absence of any showing of past discrimination against particular plaintiffs which affected their seniroity status and tenure. By implication, then, the Fifth Circuit considered that a 11931 violation would be established where seniority freezes past discrimination. The Court acknowledged in Watkins the dual attack by plaintiffs in challenging the defendants' employment practices under both Title VII and 42 USC \$1981, and rendered specific holdings with respect to both bases of plaintiffs' complaint. The Fifth Circuit did not accept defendants' argument in Watkins that the 51981 challenge was subsumed by Title VII or that separate and independent relief was not available under \$1981. Plaintiffs here have analagously alleged violations of both Title VII and 42 USC \$1983. We respectfully submit that there is no direct and substantial judicial authority which precludes remediation under 42 USC \$1981 or \$1983 for plaintiffs herein who were victims of prior discriminatory action.

The leave to amend the complaint which plaintiffs hereby seek will place squarely before this Court allegations and issues of specific past discriminatory action, which has directly affected and injured certain plaintiffs in the deprivation of seniority status and job tenure. Emposition of such allegations, we firmly believe, will demonstrate a significant showing and proof in this regard.

Defense counsel also challenges plaintiffs submission of a proposed judgment by relying on Swan v. Board of Higher Education, 319 F. 2d 56 (2d Cir. 1963). Swan held that an amended complaint could not be served as a matter of right, without leave of court to do so, merely because the clerk has failed to enter judgment after dismissal of the original complaint. The plaintiffs here are in compliance with Swan. We have not served an amended

111a Letter Dated August 15, 1975 The Honorable Kevin T. Dufry August 15, 1979 Page No. 3 complaint, and we are seeking leave to do so in the only way now available to i.e., by submission of a proposed judgment granting leave to amend. There is no judgment which we could move to amend pursuant to Rule 59(e) to incorporate leave to amend the complaint, or from which we could seek relief pursuant to Rule 60 (b). Submission of the proposed judgment raises all the issues of a motion for leave to amend pursuant to Rule 15(a). The substantive arguments by both sides on the propriety of allowing amendment confirms that the motion here is in all material respects the application for leave to amend contemplated by Swan. For the foregoing reasons, we respectfully urge that plaintiffs' proposed order be entered. Very truly yours, MURRAY A. GORDON, P. C. MAG: pb MURRAY A. GORDON cc: Mancy E. Siegel, Esq. Assistant Corporation Counsel BY HAND

Judgment

Entered September \$ 1975

(14)

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BERALDINE L. ACHA and ARLENE M. EGAN, each individually and on behalf of all other similarly situated,



Plaintiffs,

-against-

ABRAHAM D. BEAME, individually and in his capacity as Mayer of the City of New York, MICHAEL J. CODD, individually and in his capacity & Police Commissioner of the New York City Police Department and the CITY OF NEW YORK, as a public employer,

PROPOSED COUNTER-JUDGMENT

75 Civ 3128

Defendants.

This action came on for hearing before the Court, Honorable Kevin T. Duffy, District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

It is Ordered and Adjudged

that the application of plaintiffs for

a preliminary injunction be denied, and

that the action herein be dismissed.

HUGHENT ENTERED-8/3/2-

Dated: New York, New York

August 2 7, 1975

C D C

Kurpused L. Deinghore

Clerk of Court

113a Notice of Appeal Dated September 3, 1975 UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK BERALDINE L. ACHA, and ARLENE M. EGAN, each individually and on behalf of all others similarly situated, Plaintiffs, NOTICE OF APPEAL -against-Class Action ABRAHAM D. BEAME, individually and in 75 CIV 3128 his capacity as Mayor of the City of New York, MICHAEL J. CODD, individually and in his capacity as Police Commissioner of the New York City Police Department and THE CITY OF NEW YORK, as a public employer, Defendants. SIRS: NOTICE is hereby given that the plaintiffs BERALDINE L. ACHA and ARLENE M. EGAN, individually and on behalf of all others similarly situated, hereby amend their notice of appeal to the United States Court of Appeals for the Second Circuit, dated July 2, 1975, so as to include therein their appeal from the order and judgment made by U.S.D.C. Judge Kevin T. Duffy dated August 28, 1975 and entered September 2, 1975 in the office of the Clerk of the United States District Court for the Southern District of New York denying the application of plaintiffs for a preliminary injunction and dismissing the action without leave to amend the complaint. Dated: New York, New York September 3, 1975 Yours, etc. MURRAY A. GORDON, P.C. Attorn /s for Plaintiffs 666 Third Avenue New York, N. Y. 10017 213-661-7900 TO: W. BERNARD RICHLAND, ESQ. Corporation Counsel of the City of New York